

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3950 of 2018

1. Aman Multipurpose Cold Storage, a partnership firm having office at Raj Kumari Sadan, D.N. Das Lane, Langartoli, Patna through its partner Shri Upendra Kumar Singh @ Upendra Kumar Sinha.
2. Upendra Kumar Sinha @ Upendra Kumar Singh, Son of Shri Devendra Kumar Sinha, Resident of Rajkumari Sadan, D.N. Das Lane, Langartoli, Patna.

... .. Petitioners

Versus

Housing and Urban Development Corporation Ltd., A company incorporated under the Companies Act, 1956 having its registered office of “HUDCO BHAWAN”, Core-7A, India Habitate Centre, Lodiroad, New Delhi-110003 and its Regional Office, situated at 2nd Floor, Block-B/2, Maurya Lok Complex, Dak Bunglow Road, Patna 800001 _____ is Regional Chief.

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms.Mallika Mazumdar, Advocate
For the Respondent/s	:	Mr.Sanjay Singh Thakur, Advocate
		Mr.Boiwa Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 24-09-2019 Heard learned counsel for the petitioners and learned counsel for the Bank.

Pursuant to the order dated 27.08.2019 the petitioners have brought on record a copy of M.A. No. 311 of 2013 as contained in Annexure ‘P/7’ series as also the reply to the same submitted on behalf of the respondent (Certificate Holder).

On perusal of the Misc. Application it is found that the claim of the petitioner that there was a compromise and in the said compromise the Bank agreed to receive Rs. 2.60 crores in full and final settlement of the account is not correct and there



is no such statement in the Misc. Application which may give rise to an inference that there had been a settlement between the parties. The reply submitted by the Certificate Holder has objected to the Misc. Application right from the very first paragraph till it's end. Under these circumstances, the question which arises for consideration is as to whether the learned Presiding Officer of the Debts Recovery Tribunal (in short 'Tribunal') was justified in imposing a compromise by his order dated 21.10.2013 (Annexure 'P/5'). The complete text of the order dated 21.10.2013 is being produced hereinunder :-

DEBTS RECOVERY TRIBUNAL, PATNA

Date of order or proceeding	Order with Signature of the Court	Office action taken with date
21.10.2013	MA 311 of 2013 M/s Aman Multipurpose Cold Store & Ors. Vs. HUDCO Ltd. Both sides are present. Heard the ld. Counsels. The ld.counsel for applicant raised vital issue for non-payment of working capital by bank to Cold Storage, due to which cold storage could not run and the applicant tried different bank for working capital, but the same were futile due to non-issuance of objection certificate by bank. Law is well settled that if the loan amount is not paid, then how the bank shall issue no objection, due to non-payment of loan amount, the bank has not issued no objection. Another issue raised by	



	the applicant that the account has not been declared as NPA as per the RBI Guidelines, but it has been declared later on deviating the RBI Guidelines. Ld. Counsel for bank intimates that the bank has recalled the loan amount at Rs. 2.98 crores. It has been stated that the valuation of property is of Rs. 2 crores and odd and as per the ld. Counsel for applicant, the NPA amount is of Rs. 2.49 crores. In view of the rival submissions of the parties, the applicant is directed to deposit Rs. 2.60 crores within a period of 05 months in equal monthly instalments. It is made clear that if, any of the instalments is not paid by the applicant, then the bank shall approach the Recovery Officer to proceed with the recovery certificate already issued in this case and on regular payment, the bank shall intimate to the Recovery Officer to proceed with recovery certificate slowly. Accordingly, this MA stands disposed off. A copy of this order be given to the parties as well as to the Recovery Officer. Sd/- Presiding Officer	
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Recently in the case of **Bihar Gramin Bank Vs. Debts Recovery Tribunal and another** in **C.W.J.C. No. 2135 of 2017** this Court has held that the Presiding Officer of the Tribunal has no authority of law to impose a compromise on the parties. The relevant part of the judgment of this Court in the case of **Bihar Gramin Bank** (supra) read as under :-

"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 it's 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."

In the aforementioned background if the learned Debts Recovery Appellate Tribunal has set aside the order dated 21.10.2013 passed by the then Presiding Officer of the Tribunal, this Court finds no fault with the appellate order.

Learned counsel for the petitioner has submitted that pursuant to the order dated 21.10.2013 the petitioners have deposited a sum of Rs. 2.60 cores which the Bank has accepted continuously during pendency of the appeal but without any protest. In this connection learned counsel for the Bank has clarified that the Bank had filed appeal before the appellate authority within the statutory period of limitation. Before filing of the appeal, petitioners had made only one payment of installment and it is not the case of the petitioners that they were not aware of the pendency of the appeal before the appellate authority. It is further submitted that the Bank is the custodian of public money and the petitioners being a defaulter if went on depositing some amount, the Bank has not committed any wrong by accepting the same during pendency of the appeal and in such circumstance the Bank would have been bound by the judgment of the appellate authority.

Having heard learned counsel for the parties and on



perusal of the records, this Court finds no fault with the order of the appellate authority as it is evident from the records that the then Presiding Officer of the Tribunal had acted beyond his jurisdiction and had directed the petitioners to deposit Rs. 2.60 crores in some installments towards settlement of the amount even though the Bank had not agreed for the same.

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

(Rajeev Ranjan Prasad, J)

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