IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2103 of 2018

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1. Mejar Man Singh Yadav @ Man Singh, son of Late Bishwanath Singh Yadav
2. Smt. Sushila Devi, wife of Man Singh Both residents of New Diliyan, P.S. Sasaram Nagar, District - Rohtas, PIN Circle - 821115.

... ... Petitioners

Versus

1. Punjab National Bank through its Chairman-cum-Managing Director, 7 Bhikaji Kama Place, New Delhi.
2. The Chief General Manager, Punjab National Bank, Patna.
3. The General Manager, Punjab National Bank, Patna.
4. The Chief Manager, Punjab National Bank, East Gandhi Maidan, Patna - 800001.
5. The Chief Vigilance Officer, Punjab National Bank, New Delhi.
6. Narsingh Yadav, son of Shiv Murat Yadav resident of G.T. Road, Sasaram P.S. Sasaram Nagar, District - Rohtas, PIN Code - 821115.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Kunal Tiwary, Advocate
For the Respondent/s	:	Mr.Raj Nandan Pd., Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 05-09-2019 Heard learned counsel for the petitioners and learned counsel for the Bank.

Petitioners in the present case are aggrieved by and dissatisfied with the judgment and order dated 16.10.2017 passed by learned Presiding Officer, Debts Recovery Tribunal, Patna (in short ‘Tribunal’) in O.A. Case No. 165 of 2017. By the impugned judgment and certificate of recovery the petitioners have been found liable to pay a sum of Rs. 1,34,95,584/- with interest pendentelite and future interest at the rate of 10% per annum simple from 01.03.2017 till realization of the entire amount.

It is the contention of learned counsel for the petitioners that the Bank in the present case has acted in collusion with the respondent no. 6 who happened to be brother-in-law of the brother of the petitioner no. 1. It is submitted that the respondent no. 6 stood as a guarantor for the loan. He was initially impleaded by the Bank in the original application but later on his name was deleted from the array of parties. Learned counsel submits that in fact the manner in which the sanctioned amount has been disbursed and received by respondent no. 6 requires an investigation by some agency of repute. It is further pointed out that some F.I.Rs. have also been lodged in the matter.

Learned counsel for the Bank has opposed the application. It is his submission that these petitioners did not appear before the Tribunal despite service of notice and in the present writ application no plausible reasons have been shown to explain their non appearance. It is further submitted that these petitioners are the borrowers of the loan and they happened to be the partner of the firm is not in dispute. The business unit namely Vatika Restaurant Guest House was being run by the said partnership firm and the loans were obtained in that name are the matters of record. It is submitted that apart from these facts which are to a great extent disputed question of facts and perhaps may not be gone by this Court sitting under Article 226 of the Constitution of India, it is also to be taken note of that against the impugned judgment and certificate of recovery there is an adequate and equally efficacious remedy of appeal provided under Section 20 of the Recovery of Debts Due to Banks Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993'). It is submitted that the Act of 1993 has been held to be a complete code in itself and in the case of **United Bank of India Vs. Satyawati Tondon and others** reported in **(2010) 8 SCC 110 (**Paragraph 43), the Hon'ble Supreme Court has held that when it comes to recover the Bank dues for which a special forum has been provided under the special statute, the High Court must insist for exhaustion of that remedy prior to entertaining a writ application.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that what are being submitted by learned counsel for the petitioners are intensively argued disputed question of facts and those cannot be gone into by this Court sitting under Article 226 of the Constitution of

India. The petitioners have the remedy appealable if they are so advised to pursue their remedy for ventilation of their grievance and as regards the fraud played upon them allegedly, before a competent court in appropriate jurisdiction.

So far as the present case is concerned, the impugned judgment and certificate of recovery is an appealable judgment before the Debts Recovery Appellate Tribunal in terms of Section 20 of the Act of 1993. Paragraph 43 of the judgment of the Hon'ble Apex Court in the case of **Satyawati Tondon** (supra) reads as under:

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

In the given facts and circumstances of the case, this Court finds no reason to entertain the present writ application as no argument has been made to show that it will fall under any of the exceptional circumstance for purpose of entertainment of the writ application. The writ application is thus disposed of with liberty to the petitioners to seek their remedy before the appellate authority if so advised in accordance with law and in case any such remedy is applied for and a question of limitation arises for consideration, the same will be considered keeping in view the period spent by the petitioners before this Court in the present proceeding.

(Rajeev Ranjan Prasad, J)

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