IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6212 of 2017

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Gunjan Pansari, son of Sri Om Prakash Pansari, resident of Mohalla - Naya Bazar, P.S. Town and District - Siwan.

... ... Petitioner/s

Versus

1. The Presiding Officer, The Debt Recovery Tribunal, Patna, situated at A& B Wing, 5th Floor, Karpory Thakur Sadan, Kendriya Karamchari Parishar, New Rajiv Nagar Thana, Town and District-Patna-800025.
2. The Canara Bank, Siwan Branch through its Branch Manager situated at P.S. Siwan, Town and District-Siwan.
3. M/s Prabhat Trading Co. through its Proprietor situated at Naya Bazar, P.S. Town and District – Siwan.
4. Dharmesh Kumar Proprietor, M/s Prabhat Trading Co. son of Shri Sharda Prasad resident of Mohalla - Naya Bazar, Gallapatti, P.S. Town and District Siwan.
5. Rajesh Kumar Gupta son of Late Badri Narayan Gupta resident of Mohalla - Naya Bazar, P.S. Town and District - Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Prakash, Adv.
For the Canara Bank	:	Mr.Rajan Ghoshrave, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 22-08-2019 Petitioner in the present case is seeking to challenge the judgment dated 19.10.2015 passed in O.A. No.91 of 2014 by the Presiding Officer, Debts Recovery Tribunal, Patna as also certificate of recovery issued pursuant to the said judgment. By the impugned judgment, the petitioner being defendant no.3 before the Debts Recovery Tribunal has been held liable to pay amount to the extent of the guarantee given by him to the bank along with interest etc. as agreed.

A perusal of the impugned judgment shows that the learned Tribunal has considered the case of the petitioner. It was his case that he had given his guarantee of loan advanced to the defendant nos.1 and 2 upto 2007 for Rs.20 lacs but had not given further guarantee for enhancement of loan and, therefore, he should be discharged from his liability. The learned Tribunal has perused the loan documents and found that the defendant no.3 had executed guarantee documents for Rs.20 lacs on 14.02.2007.

Learned counsel for the Bank has opposed the writ application firstly on a preliminary ground that the judgment of the Debts Recovery Tribunal is appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993'). Learned counsel submits that the Act of 1993 is a complete Code in itself and it provides an adequate and equally efficacious remedy of appeal before the Debts Recovery Appellate Tribunal. It is further submitted that the petitioner instead of availing his remedy against the judgment dated 19.10.2015 before the appellate authority within the prescribed period of limitation has chosen to file the present writ application after one and half year from the date of judgment. It is submitted that in the case of United Bank of India Vs. Satyawati Tondon & Ors. reported in

(2010) 8 SCC 110, the Hon'ble Supreme Court has held that in the cases like one involving the bank's dues the High Court must ensure that the aggrieved party avails and exhaust the alternative remedy provided under the Special Statute.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that this writ application which has been preferred one and half year after the impugned judgment without exhausting the alternative statutory remedy of appeal in terms of the Act of 1993 is not fit to be entertained.

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."

This Court finds no reason as to why the impugned judgment be allowed to be challenged before this Court in writ jurisdiction by ignoring an adequate and equally efficacious remedy of appeal under the Special Statute before a Special forum provided under the Statute. This writ application is, thus, disposed off without going into the merit of the case leaving it open for the petitioner to avail his remedy, if any, available to him in accordance with law. If an alternative remedy of appeal is applied for and a question of limitation arises for consideration the same will be considered keeping in view the period spent by the petitioner before this Court in the present writ application.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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