IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15994 of 2019

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1. M/s Sinha Enterprises through its Prop. Anil Kumar Sinha, permanent Resident of Satkar Chowk, Khuthari, P.s.- Colgong Kahalgaon, Distt.- Bhagalpur
2. Anil Kumar Sinha S/o Late Hari Kristo Prasad Sinha Permanent Resident of Satkar Chowk, Khuthari, P.s.- Colgong Kahalgaon, Distt.- Bhagalpur A/p residing at Qr. No. 54, Vidyut Vihar Colony, NTPC, Singrouli, Shakti Nagar, District – Sonbhadra, UP, PIN-231222.

... ... Petitioners

Versus

1. Axis Bank Limited a body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 through its vice president, SME and Mini Credit Management Center (MCMC), at 2nd Floor, UPA Complex, 148-B, Dr. Mahenda Narain Path, Arya Kumar Road, Rajendra Nagar, P.s.- Kadamkuan, Distt.- Patna, Bihar, Pin-800016
2. The Credit Monitoring Officer CCMC, Axis Bank, 3rd Floor, AC Market, Building, 1-Shakespeare Sarani, Kolkata, Pin-700071
3. The Authorised Officer Law and Enforcement Department, Axis Bank Ltd., Kamini Center, 3rd Floor, Patliputra, Boring Road, P.s.- Patliputra, Distt.- Patna, Pin-800013
4. The Branch Manager Axis Bank Ltd., Branch Office, 34, Patal Babu Road, Bhagalpur, Bihar, Pin-812001
5. The Branch Manager Axis Bank Ltd. Harendra Market, Katoria Road, Banka, Distt.- Banka, Pin-813102
6. The Reserve Bank of India the Principal bank under RBI Act 1934, interalia carrying out its function from South Gandhi Maidan, Patna-1

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Suresh Pd. Singh No.1, Advocate
For the Axis Bank	:	Mr.Akshansh Ankit, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 17-10-2019 Heard learned counsel for the petitioner and

learned counsel representing the Bank.

Petitioner in this case is aggrieved and dissatisfied with the judgment dated 04.05.2019 passed by learned Debts Recovery Tribunal, Patna in S.A. No. 145 of 2018. By the impugned order, the learned Debts Recovery Tribunal, Patna has upheld the action taken by the authorized officer of the Bank under sub-section (4) of Section 13 of the Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002") as no fault would be found with the procedures adopted by the authorized officer in the matter of taking possession of the secured assets.

Learned counsel for the petitioner submits that the Debts Recovery Tribunal has not been able to appreciate that there was no proper declaration of the debt of the Non-Performing Asset (NPA) and in absence of there being a proper declaration of NPA the action initiated by the Bank cannot be held to be legal and justified.

Learned counsel further submits that the petitioner is ready and willing to pay the outstanding amount which stood accumulated on the date the account became NPA and for that purpose he may be given liberty to approach the competent authority of the Bank.

Learned counsel for the Bank submits that so far as the impugned order is concerned, no fault may be found with the same, however, at this stage, the petitioner cannot maintain this writ application as he has got an adequate alternative remedy of statutory appeal against the impugned order under Section 18 of the SARFAESI Act, 2002 before the Debts Recovery Appellate Tribunal. Learned counsel has in this connection relied upon the judgment of the Hon'ble Supreme Court in the case of **United Bank of India Vs. Satyawati Tondon** reported in **2010 (8) SCC 110** (paragraph 43) to contend that when it comes to recover the Bank's dues the writ application need not be entertained unless the petitioner comes before this court after exhausting all the statutory remedies.

As regards further submission of the petitioner, learned counsel for the Bank submits that if the petitioner is willing to pay the outstanding amount lying in his account, he may approach the competent authority of the Bank with his request which may be considered.

Having heard learned counsel for the petitioner and learned counsel for the Bank, this court is of the considered opinion that on the face of there being an adequate alternative remedy of statutory appeal available to the petitioner, this court need not exercise it’s extraordinary writ jurisdiction by entertaining this writ application. No reason has been shown to justify entertainment of the writ application despite there being an alternative statutory remedy. The petitioner would however be at liberty to avail the statutory remedy of appeal, if so advised, before the appellate authority and in such circumstance the question of limitation arises for consideration the same will be considered by the appellate authority keeping in view the period spent by the petitioner before this court in pursuing this writ application.

As regards the willingness shown by the petitioner to pay the outstanding dues to the Bank, this court grants liberty to the petitioner to approach the competent authority of the Bank with his proposal and in case his proposal is found to be in accordance with the recovery policy of the

Bank, the competent authority of the bank shall consider the same and will take an appropriate view of the matter because pendency of the proceeding cannot be a bar in the matter of recovery of public money.

The Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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