

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18820 of 2016

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Smt. Rinita Singh W/o Sri Sanjay Kumar Singh, R/o Singh Niwas, Bihari
Saw Lane, Muradpur, Post office Bankipur, P.S. Pirbahore, Distt. Patna
... .. Petitioner

Versus

1. Bank Of India, Through Branch Manager, Muradpur Chouhatta Branch,
Patna
2. The Union of India through Presiding officer, Debt Recovery Tribunal,
Wings 'A' and 'B', 5th Floor, Karpuri Thakur Sadan, GPOA, Near Rajeev
Nagar, P.S.- Ashiana Digha Road, Patna
... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Arbind Kumar Jha, Advocate
For the Respondent/s	:	Mrs. Kanak Verma, CGC
For the Bank	:	Mt. S.S. Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 09-08-2019 Heard Mr. Arbind Kumar Jha, learned counsel for the

petitioner and Mr. S.S. Thakur, learned counsel representing the

Bank as also the Union of India.

The petitioner in this case is aggrieved by and
dissatisfied with the order dated 28.09.2016 passed in MA No.
77 of 2016 arising out of O.A. No. 271 of 2015. By the
impugned order the learned Presiding Officer of the Debts
Recovery Tribunal, Patna (hereinafter referred to as the
'Tribunal') has refused to set-aside the ex-parte order holding
that the grounds taken in the Miscellaneous Application have no
merit.

As soon as the case was called out, Mr. Jha, learned
counsel for the petitioner placed before this Court a web copy of



order dated 17.12.2018 passed by learned co-ordinate Bench of this Court in C.W.J.C. No. 18130 of 2016 and made a submission that this case will be fully covered by the judgment of the learned co-ordinate Bench, hence the impugned order be set-aside and the writ application be allowed.

This Court will come to the said order of the learned co-ordinate Bench and will discuss the same in the context of the present case at a later stage.

The facts as revealed from the present application would show that the Bank of India had filed an Original Application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993') giving rise to O. A. No. 271 of 2015. On 22.02.2016 the said O. A. No. 271 of 2015 was disposed of by an ex-parte judgment and a certificate of recovery of Rs. 67,39,855.60/- together with interest pendente lite and future at the contractual rate from 01.05.2015 was passed.

For setting-aside the said ex-parte judgment and certificate of recovery, M. A. No. 77 of 2016 was filed under Section 22 (g) of the Act of 1993. A plea was raised therein that on 23.11.2015 the counsel of the applicant met with an accident and, therefore, he could not be represented. The fact also



revealed that after hearing M. A. No. 77 of 2016, learned Presiding Officer recorded a finding that the defendant had appeared before the Tribunal on 19.11.2015 and thereafter, more than four adjournments were granted to the defendant to file the written statement and to contest the case but the defendant had not filed written statement and more than two months lapsed but the defendant did not file written statement. Lastly, vide order dated 12.02.2016 the right of the defendant to file written statement was closed and the case was fixed ex-parte. The Tribunal had finally decided O. A. No. 22.02.2016 and issued the recovery certificate. Findings of the Tribunal did not stop here. An another finding has been recorded saying that the applicant / defendant had intentionally avoided to contest the case after filing Vakalatnama as it was found that the conducting counsel of the applicant had appeared in another O. A. No. 272 of 2015 on 03.12.2015 and had filed his Vakalatnama. The finding was, thus, that the applicant had involved in delaying tactics in the recovery proceedings.

It is evident on perusal of the records that so far as M. A. No. 77 of 2016 is concerned, it has been disposed of on merit after hearing learned counsel of both the sides. In these circumstances, the question arises as to whether the impugned



order which is otherwise an appealable order before the Debts Recovery Appellate Tribunal (hereinafter referred to as the 'Appellate Tribunal') is required to be interfered with in view of the judgment of the learned co-ordinate Bench on which reliance has been placed.

As a matter of judicial discipline and to maintain uniformity in justice, the judgment of learned co-ordinate Bench is required to be relied upon but what has revealed in course of hearing is something like a surprise for this Court which in the opinion of this Court amounts to an attempt on the part of the petitioner to mislead the Court. A perusal of the judgment dated 17.12.2018 passed in C.W.J.C. No. 18130 of 2016 would show that in the very beginning the learned Writ Court was given to understand that the order dated 28.09.2016 passed in M.A. No. 76 of 2016 was an ex-parte order which was not correct submission. Thereafter, the entire discussions seem to have been followed under this impression that the order dated 28.09.2016 was passed because learned counsel for the defendant of O. A. No. 272 of 2015 had failed to appear. It was taken as a case of laches on the part of the Advocate in representing the petitioner leading to passing of an ex-parte order in M.A. No. 76 of 2016. Perhaps, being impressed by this



submission which have been taken note of by the learned Writ Court, the order dated 28.09.2016 passed in M.A. No. 76 of 2016 has been quashed and the Tribunal has been directed to hear the matter. By way of abundant precaution, learned Writ Court recorded that the any default by the defendant or his counsel in appearing before the Debts Recovery Tribunal would automatically entail dismissal of the M.A. No. 76 of 2016.

When this Court called upon learned counsel for the petitioner as to why the correct facts could not be brought to the notice of the learned Writ Court in C.W.J.C. No. 18130 of 2016, learned counsel submits that this fact is required to be brought to the notice of the learned Writ Court for the purpose of a correction and he would do so. It is only because Mr. Jha assured, this Court, that he would bring this to the notice of the learned Writ Court immediately, this concerned Hon'ble Court is not passing any further order and has restrained itself.

It is for this reason that the judgment of the learned co-ordinate Bench is not being relied upon with utmost respect and humility.

This Court finds that the order dated 28.09.2016 impugned in the present writ application is a well reasoned order and has been passed after recording certain findings which



this Court sitting in its writ jurisdiction would not be going to disturb. The impugned order is otherwise an appealable order before the Appellate Tribunal and if so advised the petitioner may seek his remedy of appeal before the appellate Tribunal. For not entertaining a writ application on the face of existence of a statutory remedy, the court would rely upon a recent judgment of the Hon'ble Supreme Court in the case of **Authorized Officer of State Bank of Travancore and Another Versus Mathew K.C.** reported in **AIR 2018 SC 676**.

In case the petitioner prefers a statutory appeal, the period spent before this Court may be allowed to be excluded in terms of Section 14 of the Limitation Act, 1963.

This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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