

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11756 of 2013

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Anandi Prasad, son of Late Moti Lal, Resident of Mohalla – Gajadhan Chak, Gola Road, Danapur, Patna, P.O. and P.S. - Danapur, District – Patna.

... .. Petitioner

Versus

1. The Union of India through the Secretary Department of Banking, Government of India, New Delhi.
2. Reserve Bank of India through its Managing Director, Gandhi Maidan, Patna, Bihar.
3. Syndicate Bank, Rajpali complex, First Floor, Danapur, P.O. and P.S. - Digha, District – Patna through its Branch Manager.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Subhash Chandra Bose, Advocate
		Mr. Manik Vedsen, Advocate
For the RBI	:	Mr. k.k. Jha, Advocate
for the Syndicate Bank	:	Mr. Subhash Pd. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 08-01-2019

The petitioner, in the present case, is a borrower who having availed financial assistance from the Syndicate Bank (respondent no. 3) failed to make good the account as a result whereof his account was declared a Non-Performing Asset (in short the “NPA”). The respondent no. ‘3’ thereafter initiated action under the Securitization and Reconstruction of Financial Assets and Investment of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act, 2002”) by serving demand notice dated 20.10.2008 under Section 13(2) of the SARFAESI Act, 2002 for the outstanding liability of Rs. 10,93,105.00 as on 15.09.2008.



The petitioner filed an objection to the notice under Section 13(2), however, upon consideration, the objection of the petitioner was rejected in terms of Section 13(3A) of the SARFAESI Act, 2002 and action was taken for realization of the amount by serving notice under Section 13(4) of the Act, whereunder the Bank took possession of the secured asset, i.e., the land and building in question.

The parties however settled the dispute in the Lok Adalat held on 31.10.2009. A copy of the award in terms of the compromise is available on the record as Annexure - '9' to the writ application. It is evident from the award that the parties agreed to settle the dispute on payment of Rs. 12 Lakhs latest by 31.01.2010. As a consequence of failure to abide by the schedule fixed for payment, it was also agreed that the petitioner shall pay a sum of Rs. 13,05,287.00 with penal interest thereon at the compounding rate together with other charges and costs.

It also appears from the record that prior to the award (Annexure-9) the Debts Recovery Tribunal (hereinafter referred to as the "DRT") had while disposing of S.A. No. 8/2009 directed the petitioner to deposit Rs. 4 Lakhs within one month and thereafter up to Rs. 1 Lakh was to be allowed to be withdrawn and the applicant was to be permitted to operate the



account. The DRT ordered that the petitioner shall liquidate the entire dues of the Bank within six months from the date of the order and in case the petitioner fails to liquidate the entire dues within six months then operation of the account will be withheld and thereafter the Bank would be free to take action for realization of the amount in accordance with law.

Learned counsel representing the petitioner though initially tried to impress upon this court that the Bank had been calculating the interest and penal interest contrary to the agreement between the parties but having appreciated his difficulties in coming over the 'award' as contained in Annexure-9 to the writ application, learned counsel has made a submission whereunder he agrees that Annexure-9 which is an award in terms of compromise be taken as the basic document for resolution of dispute between the parties. Learned counsel for the Bank has no objection to this.

It is agreed at the bar that in terms of the award the petitioner would be liable to pay Rs. 13,05,287.00 together with penal interest at the compounding rate with other charges and costs. Learned counsel for the petitioner has however submitted that the petitioner cannot be made liable to pay interest over the penal interest as it would amount to capitalization of penal



interest which is not permissible in view of the judgment of the Hon'ble Supreme in the case of **Central Bank of India vs. Ravindra and others** reported in **AIR 2001 SC 3095**.

Attention of this court has been drawn towards the ratio of the judgment as laid down in para-55 of the aforesaid judgment of the Hon'ble Apex Court. Learned counsel submits that the petitioner would be ready and willing to pay a sum of Rs. 13,05,287.00 together with interest @ 12.5% per annum and further penal interest @ 2% per annum over and above 12.5%. It is submitted that so far as other legally recoverable charges are concerned, the petitioner would pay the same in terms of the award.

On the offer so made on behalf of the petitioner, learned counsel for the Bank has come out with a reasonable stand and submits that the Bank is ready to settle the account if the petitioner pays the amount as stated above to fulfill his obligations in terms of the award. It is thus evident from the submissions of both the parties that both are interested in settlement of the account and come out of this litigation.

This court, therefore, directs the respondent Bank to calculate the entire outstanding amount taking note of the amount fixed in the award i.e. Rs. 13,05,287.00 together with



interest @ 12.5% per annum and penal interest @ 2% per annum over and above 12.5% per annum. It is however made clear that the Bank shall abide by the law laid down by the Hon'ble Supreme Court in the case of Central Bank of India (supra) and shall not charge any interest over the penal interest. In other words, the penal interest shall not be capitalized for purpose of calculation of interest amount. So far as the other charges and cost are concerned, the Bank will strictly keep it in terms of the contract and a complete calculation be provided to the petitioner in aforesaid terms within a period of 30 days from the date of receipt/production of a copy of this order.

Learned counsel for the petitioner, on instruction submits that on receipt of the calculation chart if the petitioner is found liable to pay any amount, the same shall be paid within a period of 30 days thereafter. Learned counsel for the petitioner has submitted that during the disputed period, the petitioner has deposited some amount which may be required to be accounted for while providing the calculation chart to the petitioner.

Learned counsel for the Bank submits that the amount deposited by the petitioner are duly reflected in the ledger and the same shall be provided to the petitioner.

In view of the understanding arrived at between the



parties which have been taken note of herein-above nothing remains for adjudication now in the present writ application.

The writ application is disposed of in terms stated hereinabove.

If the petitioner fails to pay the amount due to the Bank within the prescribed period as stated above the Bank shall be free to proceed to realize the amount in accordance with law.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.01.2019
Transmission Date	

