IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19516 of 2018

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Jaibun Khatoon Wife of Nasurudin Mia @ Jabar Mia, Resident of village- Buchea, P.O. and Police Station- Sidhwalia, District-Gopalganj. ... ... Petitioner

Versus

1. The Chairman, Uttar Bihar Gramin Bank Head Office, Muzaffarpur.
2. The Branch Manager -cum- Authorised Officer, Uttar Bihar Gramin Bank, Branch Sidhwalia, District- Gopalganj.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Aditya narain Singh, Advocate Mr. Kundan Kumar Sinha, Advocate Ms. Arpana Kumari, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 30-08-2019 Heard learned counsel for the petitioner as well as learned counsel representing the Bank.

In view of reasonable stand taken by Mr. Prabhakar Jha, learned counsel for the Bank based on the records, this Writ Application is being disposed of without requiring any counter affidavit.

It appears that the petitioner was non-suited by the learned Presiding Officer, Debts Recovery Tribunal in S.A. No. 12/2018 on the solitary ground of limitation and a delay of 115 days in filing of the securitization application.

Attention of this court has been drawn by learned counsel representing the petitioner towards the statement made in paragraph nos. 3, 4 & 5 of the application seeking condonation of delay wherein the petitioner has made a statement that the possession notice dated 31.07.2017 had been served upon her but then she had approached the Bank and represented her worst financial position and had also shown her desire to discharge her liability as a surety but it is stated that the defendants straightaway rejected the proposal of the applicant and refused to grant any relief, thereafter the petitioner had also represented before the permanent Lok Adalat on 18.10.2017 and prayed there for settlement of her account which stands in the name of her son.

Learned counsel submits that the bonafide of the statement may be seen from the fact that the petitioner has herself accepted the service of notice and then she has made certain statements to explain that she was taking all possible steps to enter into a settlement with the Bank by paying her liability to the extent of the amount she had stood surety, therefore, the bonafide plea of the petitioner was required to be accepted by the Tribunal.

Learned counsel also submits that the statements of the petitioner for purpose of condonation of delay were not opposed or contested by the Bank which fact would be evident from the impugned order itself where there is no statement on behalf of the Bank that the petitioner had not approached the Bank for settlement.

Learned counsel for the Bank submits that in the given facts and circumstances of the case since the application of the petitioner has been rejected on the only ground of limitation, if this court is willing to interfere with the matter for purpose of some substantial justice, it may be done to a limited extent by allowing the parties to contest the matter on merit.

Having heard learned counsel for the parties and on perusal of the records, this court finds substance in the submission of learned counsel for the petitioner. A perusal of the application for condonation of delay shows that the plea of the petitioner was bonafide. Even before this court learned counsel for the petitioner has offered to pay a sum of Rs. 6 Lakhs in few installments towards settlement of the loan account, whereas learned counsel for the Bank has submitted that dues would be something more than Rs. 9 Lakhs.

Be that as it may, for the present, this court finds that the opportunity to file an application under Section 17(1) is the first opportunity available to a borrower/guarantor at the initial stage to raise his/her grievance against the initiation of action by the Bank under Section 13(4) of the Act of 2002, thus, the application for condonation of delay was required to be considered keeping in view the fact that the Bank had not come to oppose the application on the averments of the petitioner that she had approached the Bank for settlement. Moreover, the willingness of the petitioner to enter into a settlement and pay the amount shows her bonafide, therefore, this court sets-aside the impugned order dated 5th of July, 2018 passed in S.A. No. 12/2018 and remit the matter back to the learned Presiding Officer, Debts

Recovery Tribunal, Patna for a fresh consideration of the matter on the basis of the materials available on the record.

It will be open for the petitioner to approach the Bank for settlement within a period of 45 days from today, and if she approaches the Bank, her request will be considered by the competent authority of the Bank in terms of the recovery policy. An intimation in this regard will be made available to the petitioner within a reasonable time.

This Writ Application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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