IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21065 of 2018

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1. M/s Singh Construction Pvt. Ltd. (SCPL) through Managing Director, Represented by Authorised person, Regd. Office at New Satpura Colony Post Office Lane, Aghoria Bazar, Muzaffarpur, PS. and District-Muzaffarpur.
2. Shailesh Kumar Singh S/o Late Baleshwar Singh, R/o New Satpura Colony, Post Office Lane, Aghoria Bazar, Muzaffarpur, PS. and District-Muzaffarpur.

... ... Petitioners

Versus

The State Bank of India through the Assistant General Manager, Stressed Assets Managment Branch Fifth Floor, J.C. Road, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Khurshid Alam Khan, Advocate
For the Bank	:	Mr.Santosh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 30-08-2019 Heard learned counsel for the petitioners and learned counsel representing the Bank.

Petitioners in the present case are seeking following reliefs :-

> "(i) For issuance of a writ in the nature of mandamus directing the respondent Bank to release all the encumbered properties of M/S Singh Construction Pvt. Ltd. and further for direction to vacate the hold imposed on current Account no. 31477287751 of the petitioner.
> (ii) For issuance of any other writ /writs, order/orders, direction / directions, command/ commands as your lordship may deem fit and proper in the facts and circumstance of the case."

It is not in dispute that the petitioners have executed a corporate guarantee to secure the loans and advances provided to M/s Vasta Automobiles Private Ltd. The only ground on which the petitioners are seeking release of their encumbered properties is that earlier the Bank had filed O.A. No. 47 of 2017 against the borrowers and the guarantors before the Debts Recovery Tribunal, Patna (in short 'Tribunal') but the said original application was dismissed by the Tribunal vide its judgment dated 17.04.2018.

It is the case of the petitioners that while passing the judgment the learned Tribunal found the Bank guilty of committing breach of terms and conditions and after the order was passed the Bank had issued a No Objection Certificate. In this connection the petitioners have enclosed a No Dues Certificate dated 17.07.2018 as contained in Annnexure '2' to the writ application. It is, thus, a submission that once a No Dues Certificate is issued by the respondent-Bank the petitioners got discharged automatically from the surety. It is his further submissions that if there is any deviation from the stipulated terms and conditions of the original contract executed between the creditor and principal debtor for which no consent is obtained from the guarantor he would be automatically freed from the surety.

Learned counsel for the Bank has contested the submission of Mr. Khurshid Alam, learned counsel representing the petitioners. Referring to Annexure '2' to the writ application learned counsel submits that a bare perusal thereof would show that the same is not a 'No Dues Certificate' as is being claimed by the petitioners. In his submission the reliance placed on Annexure '2' is wholly misconceived and cannot be said to be a correct statement made in the writ application. As regards the further submission with regard to discharge of the liability, learned counsel submits that the statements made therein are only abstract submissions of the petitioners without there being any material to support the same.

Having heard learned counsel for the petitioners and learned counsel for the Bank and on perusal of the records, this Court finds substance in the submission of learned counsel for the Bank. At first instance it is evident from a bare perusal of the order passed by the Tribunal that the original application case was held not maintainable on the ground that the account was not correctly declared NPA. The Tribunal has in the last part of the order recorded as under :-

> "**ORDER**
>
> In the result, the original application of the applicant bank is dismissed and subsequently, the Counter claim of the defendants is also dismissed. The order be communicated accordingly.
>
> It is made clear that since the huge public money

> is involved in this matter, therefore, the applicant bank is free to proceed further in accordance with law.
> Judgment signed, sealed, dated and pronounced in the open court on this 17th day of April, 2018.
> Dictated & Corrected by me."

In view of the liberty granted by the Tribunal, learned counsel for the Bank has informed that a fresh O.A. Case No. 573 of 2018 has been filed before the Tribunal and the present petitioner no. 2 has already appeared in the said case.

Further, this Court finds that Annexure '2' to the writ application which is being claimed as a discharge certificate is as under :-

> "Letter No.:Gen/2018-19/ Date-17/07/2018
> To whomsoever it may concern
> This is to certify that M/s Singh Constructions Pvt Ltd were enjoying a CC and BG limit with us bearing account numbers 32478667825 and 35894044144 respectively.
> As on date the limits have been closed and there are no dues outstanding on us.
> Yours faithfully
> sd/-
> Branch Manager"

By no stretch of imagination it may be argued that Annexure '2' is a no dues certificate in respect of the loans and advances to M/s Vasta Automobiles Private Limited for whom the petitioners have provided the corporate guarantee. Thus, this submission is also not fit to be accepted. As regards the third submission that in case of there being a variation in terms of the original contract if no consent of the guarantor has been obtained he will stand discharged, this Court is of the opinion that the writ application nowhere indicates any material and pleadings supported by documentary evidences in which the aforesaid propositions of law may be applied. The contention of learned counsel for the Bank that the third submission is in the nature of an abstract submission without there being any foundation for the same is correct.

In the aforesaid view of the matter, the writ application has no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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