IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23366 of 2018

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Kalindi Devi W/o Chakradhar Mishra R/o Chanakyapuri House No. 174/A, Road No 4 Block C, Vaishali Compound, Gaya

... ... Petitioner/s

Versus

1. Presiding officer, Debt Recovery Tribunal, Ashiana Digha Road, Patna-800025
2. Managing Director, Bank of Baroda
3. The Branch Manager, Bank of Baroda, Gaya Branch, Rathaud Bhawan, Swarajpuri Road, Gaya-823001
4. The Chief Manager, cum authorized officer, Bank of Baroda, Gaya Branch, Rathaud Bhawan, Swarajpuri Road, Gaya 823001
5. Reserve Bank of India through Governor R.B.I

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad, Sr. Advocate Mr.Prakash Sahay, Advocate
For the Respondent/s	:	Mr. Sanjeev Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

6 07-01-2019 This writ application has been preferred for setting aside the Demand Notice dated 19.03.2018 issued under the signature of the Recovery Officer, Debt Recovery Tribunal, Patna by which the Recovery Officer has in exercise of power conferred under Section 29 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'Act 1993') read with Rule 2 of second schedule to the Income Tax Act, 1961 called upon the borrowers and guarantors to pay the certificate amount in O. A. 412 of 2017 with interest and cost etc. It further appears from the records available before this Court that the petitioner was one of the defendants in O. A. No.

412 of 2017 and she is certificate debtor no. 7 in the Demand Notice. It is clear from the materials available on the record that the recovery officer is in seisin of the matter and is looking for execution of the certificate in course of which the Demand Notice has been issued.

In course of hearing learned Senior Counsel representing the petitioner admits the factual position to the extent that the petitioner is certificate debtor in the case, however, his main submission is that unless the assets available with the borrower are exhausted towards satisfaction of the certificate amount, no step for recovery be taken against the present petitioner who is a guarantor of the loan.

Counter affidavit filed on behalf of the Bank be kept on record.

On the other hand, learned counsel representing the Bank has opposed this submission on the ground *inter alia* that this is a misconceived application preferred by the petitioner knowing fully well that she is a certificate debtor in the certificate issued by the Presiding Officer, Debts Recovery Tribunal in the Original Application and so long as the certificate remains in existence, she is liable to be proceeded against for the amount mentioned therein.

Learned counsel further submits that it is no longer *res integra* that the liability of the borrower and that of the guarantor are co-existent and co-extensive. In this connection, attention of this Court has also been drawn to the definition of the word 'Borrower' under Section 2(1) (f) of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 and it is submitted that the word 'Borrower' includes 'Guarantor'.

He has also relied upon a judgment of the Hon'ble Apex Court rendered in the case of **Authorized Officer State Bank of Travancore and Another Versus Mathew K. C.** reported in **(2018) 3 Supreme Court Cases 85** to submit that normally a writ application under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available. Learned counsel submits that in case the petitioner feels aggrieved by the any order passed by the Recovery Officer, she has a remedy available under Section 30 of the Act, 1993 by way of appeal before the Presiding Officer of the Tribunal. It is further submitted that in the given facts and circumstance where the recovery officer has simply called upon the petitioner to pay certificate amount, no interference is required from this Court.

Having heard learned Senior Counsel for the petitioner, learned counsel representing the Bank as also on perusal of the materials available on the record, this Court is of the considered opinion that this writ application is misconceived and cannot proceed. The Demand Notice dated 19.03.2018 has been issued by the Recovery Officer while registering the recovery proceeding arising out of the certificate issued by the Presiding Officer of the Debts Recovery Tribunal. It is not in dispute that the petitioner is the certificate debtor no. 7 in the recovery proceeding. In that view of the matter, this Court would not entertain this writ application. It is dismissed accordingly.

The petitioner is, however, given liberty to seek her statutory remedy whatsoever available to her in accordance with law.

(Rajeev Ranjan Prasad, J)

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