IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4489 of 2020

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1. Jageshwari Memorial Institute of Speech and Hearing a Society registered Under the Societies Registration Act 1860, Having its registered Office at Indrapuri, Road No.5, P.S.-Rajeev Nagar, Patna-800024, through its General Secretary Sumanyu Bharadwaj, Male aged about 30 Years, Son of Dr. Manoj Kumar, Resident of Road no.5,house no. 5/4, P.O. Keshri Nagar, P.S. Patliputra, District-Patna, Bihar.
2. Sumanyu Bharadwaj Son of Dr. Manoj Kumar Resident of Road no. 5, House no. 5/4, P.O. Keshri Nagar, P.S. Patliputra, District-Patna, Bihar.
3. Amitabh KUmar Son of B.K. Singh Resident of Udaygiri Apartment, P.S. Kotwali, District-Patna.
4. Saurabh Chaturvedi, Son of Late M.N. Chaturvedi, Resident of Indrapuram, P.S. Indrapuram, District Ghaziabad, U.P.
5. Manisha Kumari Wife of Dr. Manoj Kumar Resident of Road No.5, Indrapuri, P.S. Patliputra, District Patna.
6. Mukesh Jha Son of Kailash Chandra Jha, residento f Shivpuri, P.S.-S.K. Puri, District-Patna.
7. Anurag Kumar Son of Sudhir Kumar Singh Resident of Rajendra Nagar, P.S. Kadamkuan, District-Patna.
8. Kaushlendra Narayan Son of Devendra Narayan Resident of Nala Road, P.S. Kadamkuan, District-Patna.
9. Nawal Kishore Prasad Sinha Son of Late Chandra Prasad Sinha Resident of Speaker Road, Muzaffarpur, P.S. Qazi Mohammadpur, District-Muzaffarpur.
10. Amir Faisal Khan Son of Abdul Gaffar Khan Residento f A.G. Colony, P.S. Shastrinagar, District Patna.

... ... Petitioner/s

Versus

1. Allahabad Bank through its Managing Director, a Banking Company registered Under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Netajee Subhash Road, Kolkata-700001
2. The Authorized Officer, Allahabad Bank, Main Branch Budha Marg Patna-800001
3. The Assistant General Manager, Allahabad Bank, Budha Marg, Patna-800001

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nilanjan Chatterjee

For the Respondent/s : Mr.Bimlendu Mishra

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 06-03-2020

Heard Mr. P. N. Shahi, learned senior Advocate for the petitioners and Mr. Bimlendu Mishra, learned Advocate for the respondent / Allahabad Bank.

A loan amount of Rs. 14.08 crores was sanctioned and disbursed by the respondent / Allahabad Bank in favour of the petitioner no. 1, a registered society, of which petitioner nos. 2 to 10 are the members. For some reason or the other, the loan was declared NPA and SARFAESI proceedings were initiated against the petitioners. During the pendency of such proceedings, an offer of one time settlement (OTS) was made by the petitioners and it was agreed on a particular sum of money. The claim of the petitioners is that they had offered Rs. 12 crores but the stand of the respondent / Allahabad Bank is that the amount of OTS was agreed at Rs. 18.30 crores.

In any view of the matter, Rs. 10 crores admittedly has been paid by the petitioner towards amortization of the loan amount.

Because of such dispute over the amount of the OTS, payments could not be made and the respondent / Bank proceeded under the SARFAESI Act for recovery of the rest of the amount. However, the notice received by the petitioner under Section 13(4) was with respect to the following amount:

> *"Rs. 19,02,37,816.00 (Nineteen Crore Two Lakh Thirty Seven Thousand Eight Hundred and Sixteen only) + Interest and other charges there on from 16.08.2018 less recovered amount if any from 16.08.2018, which has to be realized by sale of the properties."*

This writ petition was filed on the petitioners receiving such notice as well as the notice for auction sale of up till now constructed building of petitioner no. 1 and other properties of the guarantors.

The matter was mentioned by Mr. Shahi, learned Advocate for the petitioners and on being satisfied about the urgency, the case was taken up out of turn.

In order to avoid repetition of facts, it would be appropriate to extract the order dated 27.02.2020 passed by this Court:

> *"The petitioner No. 1 which is a registered Society and petitioner Nos. 2 to 10 who are its members have approached this Court for setting aside the entire SARFAESI proceedings as also for staying the sale of the up-till now constructed hospital along with the land appurtenant thereto for recovery of the loan amount of the Allahabad Bank.*
>
> *The petitioners were sanctioned loan for setting up a 300 bedded multi specialty hospital along with medical college. A loan amount of rupees 14.08 crores was sanctioned and the ratio of investment was settled at 53:47.*
>
> *It is the case of the petitioners that by garnering all its funds including that of the members who had mortgaged their personal properties, 47 percent of the entire expenses were spent.*
>
> *In any view of the matter, the loan went bad and a SARFAESI proceeding was*

initiated against the petitioners. A notice was served to the petitioners under Section 13(2) of the SARFAESI Act which was replied by the petitioners. The reply was also responded to but during the pendency of the proceedings, an offer for onetime settlement (OTS) was made.

Mr. P.N. Shahi, learned senior advocate for the petitioners contends that the offer by the petitioners was of rupees 10 crores which was enhanced to rupees 12crores, which statement appears to have been refuted by the respondent/Allahabad Bank which claims that the offer was for rupees 18.30 crores.

Another fact, which has been brought to the notice of this Court, is that rupees 10 crores has already been deposited. For the rest of the amount, again a proceeding has been initiated and straightaway, a notice under Section 13(4) of the SARFAESI Act has been served upon the petitioners.

This Court has also been taken through a proceeding brought about by the members of the petitioner No. 1 when their agricultural land was also sought to be attached/sold for amortizing the loan.

However, this Court did not consider the aforesaid objection on the ground that notwithstanding the legal position that an agricultural land can not be used as a collateral *security, it was offered by the petitioners and accepted by the Bank.*

In any view of the matter, the urgency shown by the learned counsel for the petitioners for this case to be heard out of turn is the auction sale notice intimating that the property in question shall be sold on 28th of February, 2020.

On such mentioning by the learned counsel, this Court has proceeded to hear the matter after seeking the presence of one of the panel advocates of Allahabad Bank.

Mr. Bimlendu Mishra, learned panel advocate for Allahabad Bank submits that he has no written information or instructions in the matter but he shall surely get instructions by the next date.

Considering the urgency of the matter, re-notify on 3rd of March, 2020.

Mr. Shahi, learned senior advocate has submitted that the option of approaching the DRT has not remained as efficacious for the reason that Patna Bench of the DRT is vacant and it is only on few days that a Bench of Kolkata DRT functions at Patna.

Till the next date, the property shall not be auctioned/sold."

Mr. Bimlendu Mishra, learned Advocate for the respondent / Allahabad Bank has received a communication dated 04.03.2020 from Allahabad Bank which is as follows:

"Ref No. SAMB/2019-20/829

Date: 04.03.2020

To,

Mr. Bimlendu Mishra

Advocate, High Court, Patna.

Dear Sir,

Civil Writ Jurisdiction Case No. 4489 of 2020 A/c- J.M. Institute Speech and Hearing

This has reference to telephonic conversation had with you regarding the observation of the Hon'ble High Court, Patna in the above mentioned Writ Petition on 03.03.2020. We would like to inform you the following decision of our competent authority for submission before the Hon'ble Court on behalf of bank:

1. As per bank's instruction Circular No.16440/Recovery/2019-20/02 dated 01.04.2019 on the subject 'Recovery Management Policy:2019-20' under the Heading of "Revival of failed compromise proposal with delayed period interest" the revival of failed compromise can be considered by the Bank if the borrower pays @1 Month MCLR + 1% i.e. 8.85%

Simple interest on reducing balance from the date of failure of compromise i.e. 30.11.2019.

2. In addition to the above circular it is further expected from the borrower that they should make upfront payment of Rs. 25% of remaining compromise sum as notion of acceptance of terms and condition of the compromise.

This is for your necessary instruction from the bank and doing the needful to protect the interest of the bank.

Yours faithfully

Sd/-

Chief Manager"

The learned counsel for the petitioner, on the aforesaid stand of the respondent / Bank has agreed to pay the settlement amount of Rs. 18.30 crores minus what has already been paid (Rs. 10 crores).

The petitioner has also, in principle, agreed to pay one month MCLR plus 1 % (i.e. 8.85 % simple interest) on reducing balance from the date of failure of compromise i.e. 30.11.2019.

However, a request was made by the learned counsel for the petitioner that 25 % of the remaining sum be permitted to be deposited in three equal installments in three months. The balance amount along with interest has also been agreed to be paid within further three months. Thus the entire amount of Rs. 8.30 crores, which is the balance payment with interest as is payable, shall be paid within a period of six months, to be counted from today.

The aforesaid assurance on behalf of petitioners is acceptable to the respondent / Allahabad Bank.

In view of such settlement between the parties and taking into account that the purpose of the settlement is to have the respondent / Bank restored its money which is public money and also, simultaneously, provide breathing space to the petitioner no. 1, which is also an educational enterprise, this Court deems appropriate and expedient to put its imprimatur on such settlement.

It is expected that the parties shall respect their undertaking and till three months from today, the proceedings under the SARFAESI Act shall not be pursued by the respondent / Allahabad Bank, on the petitioner depositing 25 % of the balance amount within a period of three months. The respondent / Bank shall await the full and final payment of the petitioner within six months before embarking upon any further coercive process against the petitioner for recovery of the loan.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	06.03.2020
Transmission Date	