

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6788 of 2020

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Nitish Kumar, Son of Abhay Kumar Ojha, Resident of Judge Bazaar Ward
No. 4, Behia, Bhojpur, Bihar.

... .. Petitioner/s

Versus

1. HDFC Bank through Chairman, HDFC Bank Ltd. House, Senapati Bapat Marg, Lower Parel (West), Mumbai- 400013.
2. Authorized Officer, HDFC Bank, Exhibition Road, Bimla Sadan, Holding No. 801/432, Exhibition Road, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saroj Kumar Upadhyay, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-11-2021

Heard learned counsel for the parties.

In the instant petition, the petitioner has prayed for
the following relief(s):-

“1. That this is an application for
issuance of writ in the nature of certiorari or
any appropriate writ for setting aside the
order passed by authorized officer of HDFC
BANK on 2/3/2020 and sale of truck



without considering the prescribed rules, Acts, norms and the facts as well as without applying the mind as law lay down by the Govt. of India and RBI properly and further for issuance of a writ in the nature of Mandamus or any other appropriate to refer the action.”

Undisputed and admitted facts are that the petitioner has borrowed loan from the respondent Bank. In not repaying the loan amount as well as interest, impugned action has been taken by the respondent Bank.

In respect of any issues regarding non-payment of loan by the petitioner, petitioner has a statutory remedy under the SARFAESI Act, 2002.

The Hon'ble Apex Court in the case of **United Bank of India Vs. Satyawati Tondon and Others**, reported in **(2010) 8 SCC 110**, held that High Court should ordinarily not entertain the petitions under Article 226 of the Constitution of India, in respect of SARFAESI Act, 2002 and insist the parties to exhaust the statutory remedies available under the Act. Para 43 and 55 reads as under:

“43. Unfortunately, the High Court



overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under



the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

Further in the case of **Assistant Commissioner (CT) LTU, Kakinada and Others Vs. Glaxo Smith Kline Consumer Health Care Limited**, reported in **2020 SCC OnLine SC 440**, it is held that the Writ Court must exercise self imposed restraint to not entertain the writ petition if an alternative effective remedy is available to the aggrieved person.

In the light of the attending facts and circumstances, petitioner has not made out a case for interference.

Accordingly, the writ petition is dismissed reserving liberty to the petitioner to approach appropriate forum. In the event of approaching the jurisdictional forum, the forum is hereby directed to take note of Section 14 of the Limitation Act, 1963, to condone the delay if any, so as to redress the petitioner’s grievance(s).



With the aforesaid observations, the petition stands
disposed of.

(Sanjay Karol, CJ)

(P. B. Bajanthri, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	22.11.2021
Transmission Date	

