IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1123 of 2019
In
Civil Writ Jurisdiction Case No.21123 of 2018

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M/s Shashi Bhushan Cold Storage Pvt. Ltd. through the Managing Director having its registered office at Vill. + P.O.- Berui, Via- Baniapur, District- Saran.

... ... Appellant/s

Versus

1. Housing and Urban Development Corporation Ltd. Regional Office at 2nd Floor, Block B/2, Mauryalok Complex, Dak Bungalow Road, Patna, Bihar through the Authorised Officer.
2. The Regional Chief Housing and Urban Development Corporation Ltd., Regional Office at 2nd Floor, Block B/2, Mauryalok Complex, Dak Bungalow Road, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Raushan, Advocate

For the Respondent/s : Mr. Sanjay Singh Thakur, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-03-2021

Present appeal has been preferred against the order and judgment dated 30.08.2019 passed by the learned single Judge in CWJC No. 21123 of 2018, titled as M/s Shashi Bhushan Cold Storage Pvt. Ltd through its Managing Director Vs. Housing and Urban Development Corporation Ltd. & Anr.

It is not in dispute that the instant appellant, respondent in the original application, had not approached any one of the authorities under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act') or preferred a petition before this Court under Article 226/227 of the Constitution of India, seeking disbursement of the amount of loan sanctioned in its favour.

In fact, it was the petitioner (respondent herein), namely, Housing and Urban Development Corporation Ltd., who, alleging breach of the terms of the loan agreement, had initiated proceedings under the provisions of the Act for recovery of the amount disbursed.

Surprisingly, while dismissing such action, the Debt Recovery Tribunal (hereinafter referred to as the 'Tribunal'), constituted under the Act, issued directions against the petitioner, directing release of the remaining amount of the loan, sanctioned in favour of the appellant herein. It did not even consider the factum of alleged breach of the terms of loan agreement.

If the appellant had not chosen to initiate appropriate action by way of an independent petition or filing a counter claim, then there was no occasion for the Tribunal to have issued such a direction. Reliance on Section 19(25) of the Act is totally misconceived and untenable in law. The Tribunal is authorised and entitled to issue directions for preventing abuse of its process and to secure the ends of justice. In exercise of such a statutory power it cannot not assume the power of a writ court under Article 226/227 of the Constitution of India.

The exercise of statutory power, needless to add, has to be only under the framework of the Statute and for achieving the aims and objects and fulfilling the role, conferred upon the Tribunal and not any further. Unmindful of the fact that the borrower had not initiated any action or filed a counter claim at best it could had dismissed the action but not passed orders in favour of the respondent herein.

It is a matter of record that the appellant herein had committed breach of the loan agreement warranting the petitioner/respondent herein to not only stop disbursement of the balance installments of the sanctioned amount but initiate proceedings for recovery of the amount already disbursed.

Learned counsel for the respondent clarifies that his client has already challenged the order passed by the Tribunal before the appellate authority constituted under the Statute.

As such, we find no infirmity with the impugned judgment passed by the learned single Judge. The present appeal is devoid of any merit. It is, accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Amrendra

AFR/NAFR	
CAV DATE	
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