IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1178 of 2020

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1. M/s Tirupati Storage and Allied (P) Ltd. Having its registered office M 52/22A, Road No. 25 Sri Krishna Nagar P.S. Buddha Colony Patna through its Managing Director Smt. Vijaya Singh aged 49 years (female) Wife of Dr. Yashwant Singh, Resident of M 52/22A, Road No. 25 Sri Krishna Nagar, Police Station- Buddha Colony, Patna- 800001.
2. Smt. Vijaya Singh, Wife of Dr. Yashwant Singh, Resident of M 52/22A, Road No. 25 Sri Krishna Nagar, P.S. Buddha Colony, Patna- 800001.
3. Dr. Yashwant Singh, S/o Late Shakti Prasad Singh, Resident of M 52/22A, Road No. 25 Sri Krishna Nagar, P.S. Buddha Colony, Patna- 800001.
4. Dr. Satish Kumar Singh, Son of Late Durga Shankar Prasad Singh, resident of A- 24, Kailash Colony, Police Station- Kailash Colony, New Delhi-110048 represented by his power of Attorney Holder Dr. Yaswant Singh, Resident of M 52/22A, Road No. 25 Sri Krishna Nagar, Police Station - Buddha Colony, Patna- 800001.

... ... Petitioners

Versus

1. United Commercial Bank Having its Head Officer at 10, Biplabi Trailokya, Maharaj Sarnai (Brabourne Road), Kolkatta, represented by its Managing Director and Chief Executive Officer Head Office at 10, Biplabi Trailokya, Maharaj Sarnai (Brabourne Road), Kolkatta - 700001.
2. Managing Director and Chief Executive Officer, UCO Bank, Head Office at 10, Biplabi Trailokya, Maharaj Sarnai (Brabourne Road), Kolkatta - 70001.
3. Chief Manager United Commercial Bank, Fraser Road Branch, Patna-800001.

... ... Respondents

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Appearance :
For the Petitioners : Mr. Sanjeev Ranjan, Advocate
For the Respondents : Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
C.A.V. JUDGMENT
Date : 09- 08-2021

This is a classic case of impudence of a litigant approaching this Court in its equitable writ jurisdiction under Article 226 of the Constitution of India with blatant falsehood by deliberately making false statement on oath and at the same time challenging the correctness of an order passed by the Chairman, Debts Recovery Appellate Tribunal, Allahabad, on the ground of same having been obtained by fraud by the officials of the UCO Bank. From the pleadings and admitted facts on record, the Court has noticed a remarkable audacity in the petitioners attempting to establish a claim based on patent falsehood.

2. Though on the basis of certain admitted facts, this writ application could have been dismissed on merits, I have deemed it proper to take note of certain pleadings brought on record on behalf of the petitioners, to address the issue of falsehood and overall conduct of the petitioners in approaching this Court.

3. The petitioner No. 1 is a Company incorporated and registered under the Indian Companies Act. Petitioner No. 2, it is stated has been authorized by the resolution passed in the meeting of the Board of Directors of the Company to prosecute this matter of behalf of the Company.

4. The petitioners have filed the writ application seeking following reliefs : -

> *"I. For a writ of certiorari to quash the order dated 13.02.2018 passed in Appeal No. R-79/2014 by the Chairman Debt Recovery Appellate Tribunal, Allahabad, whereby it had*

set aside the order dated 5.5.2014 passed in M.A. No. 150 of 2014 by the Tribunal Modifying the amount determined vide order dated 17.9.2012 passed in O.A. No. 283 of 2011 and recorded a finding on merits justifying the debt determined by order dated 17.9.2012 against a challenge made to an order passed in review which order is wholly without jurisdiction, illegal and unsustainable.

II. For a writ of certiorari to quash the order dated 14.10.2019 passed in M.A. No. 37 of 2018 arising out of Appeal No. R-79/2014 by Chairman, DRAT, Allahabad declining to review the order dated 13.2.2018 passed in Appeal No. R-79/2014, even when the same was vitiated by error apparent on record, patent mistake in recording concession which was never made and recording finding on merits as regard the correctness of order dated 17.9.2012 passed in O.A. No.283 of 2011 which was beyond jurisdiction as the challenge in appeal was against the order reviewing the original order and not against the original order.

III. For a writ of certiorari to quash the order dated 17.09.2012 passed in O.A. No. 283/2011 by the Presiding Officer, Debts Recovery Tribunal, Patna determining the debt due as arbitrary and illegal as the order is not supported by reason for reaching the *conclusion and thus the order suffers from non-application of mind and verges on arbitrariness.*

IV. For any other relief/reliefs to which the petitioners are entitled under law.”

5. It has been pleaded in the writ application that the Company had applied to UCO Bank for a term loan of Rs. 2.5 crore for construction of onion storage and with a view to secure loan amount, it had offered equitable mortgage of certain properties mentioned in the writ petition. The respondent Bank sanctioned term loan for a sum of Rs.1.53 crore vide letter dated 08.10.2003 with rate of interest at 13% per annum or such other rate as might be prescribed by the Reserve Bank of India (RBI). The repayment was half yearly installment to be made in seven years including moratorium of one year.

6. Initially, a sum of Rs. 25 lakhs was disbursed. When the Company insisted for disbursement of entire loan amount, the respondent Bank insisted for mortgage of House No. M52/22A, Road No. 25, Sri Krishna Nagar, Patna, standing in the name of Dr. Yashwant Singh (petitioner No. 3) for release of the entire loan amount after getting the said property released from Indian Overseas Bank, where it was kept as primary security to avail Agricultural Term Loan limit of Rs. 79 lakhs. As the Indian

Overseas Bank refused to allow creation of second charge over the property, the Company was asked to mortgage additional property as collateral security with primary charge to release the balance loan amount and accordingly the Managing Director created an equitable mortgage over her personal property at Anandpur, Bihta, in lieu of M-523/22A, S.K. Nagar, Patna. The said substitution of the property in lieu of creation of second charge was accepted by the respondent Bank to secure loan amount of Rs.153 lakhs. In support of the said statement, the petitioners are relying on Annexure-3 to the writ application. The petitioners have alleged that subsequently, with 'obvious malafide intention', the respondent Bank wrongly amended the sanction letter dated 19.04.2004 and reduced the sanctioned amount from Rs.1.53 crores to Rs. 92 lakhs. It has further been asserted that because of deliberate delay in disbursal of loan amount by the Bank, the project got stranded and till December, 2004, only Rs. 35 lakhs were disbursed. It is stated in the writ application that the Bank had got conducted valuation of the incomplete project and the approved valuer had estimated the cost of construction at Rs.30.75 lakhs till 2004, whereas a sum of Rs.35 lakhs only was disbursed by the Bank till 2004. There is specific averment in paragraph 12 of the writ application that after repeated letters and requests, the respondent Bank in tranches disbursed further amount of Rs.30 lakhs between 2004 to 2007 and thus total sum of Rs. 70 lakhs was disbursed before the account was declared as Non Performing Asset (NPA) on 31.03.2007.

7. It is recorded here that much emphasis has been laid during the course of argument on clear statements made in paragraph 12 of the writ petition that the account was declared as Non Performing Asset on 31.03.2007, and whatever amount was disbursed, the same was before 31.03.2007 and that a total sum of Rs.70 lakhs only was disbursed to the Company. The statement made in paragraph 12 of the writ application is being reproduced hereinbelow : -

> *"12. That after repeated letter and request the respondent bank in tranches disbursed a further amount of Rs. 30 lacs in between 2004 to 2007 and thus a total of Rs.70 lacs was disbursed before the Account was declared as non-performing Asset on 31.03.2007."*

8. In paragraph 4 of the supplementary affidavit filed on behalf of the petitioners on 20.05.2021, there is statement to the effect that the account was declared NPA on 31.03.2007 and 'as such no further disbursement was released after letter dated 09.03.2007'. It is further stated that the Company was subsequently asked to deposit a sum of Rs. 52 lakhs in the loan account with an assurance that the balance sanction amount of Rs. 1.53 crore will be disbursed and it will be apprised of enhancement of sanctioned term loan limit for upsurge in the cost of escalation of project on account of delay from 2002 to 2009. It has been further stated in paragraph 15 that even after deposit of Rs. 52 lakhs in 2008, the respondent Bank did not disburse any amount thereafter. It has been averred, with reference to the valuation done by the approved valuer of the Bank that as on 29.05.2009, the cost incurred on construction of the project, which was incomplete till then, was found to be to the tune of Rs.1.79 crores. The report was made available under the orders of the Central Information Commission, New Delhi.

9. It is the petitioners' further case that instead of disbursing the balance amount, the Bank chose to invoke the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred to as 'the SARFAESI Act') by issuing a demand notice under Section 13(2) of the Act by making a demand of Rs.99,57,149/- inclusive of interest charged till 29.09.2008.

10. I will be dealing with the developments arising out of issuance of demand notice under Section 13(2) of the

SARFAESI Act later, which are relevant for the present adjudication also, though it has been strenuously argued on behalf of the petitioners that the same has nothing to do with the relief which the petitioners are seeking in the present writ application.

11. The UCO Bank filed an application before the Debts Recovery Tribunal, Patna, (DRT) on 03.11.2011 for realization of a sum of Rs.1,53,38,333/- up to 30.09.2011 with *pendente lite* and future interest at contractual rate, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'the RDDBFI Act'), which came to be registered as O.A. No. 283 of 2011. A copy of the said application has been brought on record by way of Annexure-9 to this application. It is the petitioners specific case that computation of the amount to be realized and the computation of interest was against and contrary to the guidelines of the RBI and, therefore, bad, in the light of Supreme Court's decision in case of ***Central Bank of India vs. Ravindra and Others*** **(AIR 2001 SC 3095)**. It has been stated that there was no disclosure in the said application under Section 19 of the RDDBFI Act that the amount of Rs.1,53,38,333/- was arrived at by adding interest on the principal amount advanced. It is also the petitioners case that the Bank wrongly classified the loan as the cash-credit, whereas the loan was granted in the nature of term loan of agricultural priority sector with back ended subsidy of Rs.1.53 crores. It has further been stated that the Bank did not furnish detailed digital statement of account till 03.11.2011, but account till 16.10.2009 was enclosed in digital tabular form and thereafter the amount of Rs.1.53,38,333/- was mentioned in the statement for the period 06.10.2009 to 30.09.2011 by 'jugglery with pen' without indicating the rate of interest, penal interest charge and mode and method of calculation for the said period. It has again been reiterated in paragraph 21 as under : -

> *"Further once the account was declared NPA, it was incumbent for the respondent Bank to proof each entry in the said account as there was no mutual debit and credit."*

12. It has been further pleaded that the Company appeared in O.A. No. 283 of 2011 before the DRT, Patna, and sought time for filing written statement. The Company has purchased a draft of Rs.1.5 lakhs for filing counter claim and, as a matter of fact, the written statement, which was filed on 10.09.2012 by the Company before the Tribunal, was a counter claim-cum-written statement, which was accepted by the Registrar of the Tribunal on deposit of Court fee of Rs.1.5 lakhs. It is the petitioners' further case that the Presiding Officer rejected the time petition filed for filing written statement-cum-counter claim and had fixed the case for *ex-parte* hearing on 10.09.2012. Subsequently the Presiding Officer, it is said, allowed time till 10.09.2012 for filing written statement. The written statement-cum-counter claim was filed on 10.09.2012 though the Tribunal recorded in its order dated 10.09.2012 that only the written statement was filed, the petitioners plead. Subsequent to the filing of the said written statement, the petitioners are said to have filed the Court fee of Rs.1.5 lakhs for counter claim on 12.09.2012, which was accepted and the case was fixed for 17.09.2012. The Presiding Officer, DRT, Patna, allowed the claim of the Bank by determining the debt due at Rs.1,53,38,333/- vide order dated 17.09.2012.

13. It is the case of the petitioners that the said order of the Tribunal dated 17.09.2012 passed in O.A. No. 283 of 2012 is bad for the reason that the petitioners were not provided any opportunity to file evidence on affidavit nor there was any material before the Court to record satisfaction that there was no necessity for examination of witnesses. The finding of the Tribunal in its order dated 17.09.2012 was based on no evidence. The judgment of the Tribunal dated 17.09.2012, according to the petitioners, is perverse. Curiously, after passing of the final order dated

17.09.2012 passed in O.A. No. 283 of 2011, the petitioners filed a miscellaneous application giving rise to M.A. No. 406 of 2012 before the Tribunal for recall of the part of the order dated 03.09.2012, whereby the Company was debarred from filing written statement. The Tribunal recorded following order on 08.11.2012 on the said M.A. No. 406 of 2012 : -

> *"Ld. Counsel for both sides are present. Heard the arguments of both sides and perused the case records.*
>
> *In this case, judgment has already been passed on 17.09.2012 but he wants to recall the part of the order dated 3.9.2012. On perusal of the records, it appears that on 3.9.2012, the applicant filed time petition which was without affidavit and again prayed for time and time was allowed upto 10.09.2012 for filing WS, but on 10.09.2012, WS was filed which has been discussed in judgment. Accordingly, MA is not maintainable and is hereby dismissed."*

14. The company thereafter filed another miscellaneous application giving rise to M.A. No. 482 of 2012, this time, taking a plea that the order dated 17.09.2012 passed in O.A. No. 283 of 2011 was *ex-parte* as there was no discussion of the counter claim and the written statement and, therefore, the Tribunal should set aside the *ex-parte* judgment. The said application was dismissed by an order dated 04.03.2014 passed in M.A. No. 482 of 2012. While rejecting the said application, the Tribunal noted the observations made in the order dated 17.09.2012 to the effect that counter claim filed by the company after filing of the written statement and after reserving the order was not maintainable and accordingly the same was dismissed.

15. It may be noted, at this stage, that the petitioners had filed a writ application before this Court challenging the notice issued under Section 13(2) of the SARFAESI Act, which was dismissed by an order dated 19.10.2012 passed in C.W.J.C. No. 15468 of 2012. The appeal under Letters Patent of the High Court was also dismissed by an order dated 18.09.2013 passed in L.P.A. No. 1903 of 2012, against the order dated 19.10.2012 passed in C.W.J.C. No. 15468 of 2012. Special Leave Petition preferred by the petitioners was also dismissed by the Supreme Court by an order dated 24.02.2014 passed in S.L.P. No. 32485 of 2012.

16. It has been stated in paragraph 28 of the writ petition that the petitioner Company filed another application giving rise to M.A. No. 150 of 2014 on the ground that earlier order dated 17.09.2012 passed in O.A. No. 283 of 2011 was vitiated by fraud as the respondent Bank had failed to state the real facts and by concealing facts had obtained the said order as it was a case of part sanction and part disbursal of loan as earlier amount of Rs.1.53 crores was scaled down to Rs.92 lakhs only by amended sanction letter dated 29.04.2004 and 'out of which only 70 lakhs was disbursed'. It is the petitioner's case that the Presiding Officer, DRT, on discovery of the said facts, vide order dated 05.05.2014 passed in M.A. No. 150 of 2014 modified the amount of debt due to the NPA amount plus 15 lakhs as interest. It has also been stated that the demand draft and cheque produced by petitioner No.1 Company was accepted by the counsel for the respondent Bank in presence of the Bank officials. However, subsequently, the drafts and cheques were refunded four hours hence, after disposal of case. Thus, the decision arrived on the basis of the consensus was subsequently resiled, the petitioners contend. The petitioners have not mentioned the provision of law under which the said M.A. No. 150 of 2014 was filed. The order dated 05.05.2014 passed on the M.A. No. 150 of 2014 by the DRT, deserves to be reproduced, which reads as under : -

> *"05.05.2014. Ld. Counsel for both sides are present. Bank Officer is also present. Heard the parties. The applicant has handed over a DD of Rs. 5 lacs and four other post dated cheque of Rs.20 lacs which was handed over to ld. Counsel for bank. It is made clear*

that if the amount on that date, will be found insufficient, then the rest amount be deposited by applicant.

In view of the rival submissions of the parties, the account is settled on NPA amount with Rs.15 lacs as interest and the same be paid by end the June 2014. Any amount paid after NPA be deducted. Ld. Counsel for bank has vehemently opposed the settlement. As I am passing this order because, the bank has disbursed part sanctioned amount and due to this, the applicant has suffered huge loss and matter travelled upto Hon'ble Supreme Court, but till today no recovery of bank has been made. Accordingly, this MA stands disposed off. A copy of this order be given to the parties.

Later on

Ld. counsel for bank refused to accept the DD and 4 post date cheques of dated 25.5.2014, 28.5.2014, 29.5.2014 & 31.5.2014 each of Rs. 5 lacs as bank is denying to receive the same. The DD and post dated cheques are handed over to ld. Counsel for applicant with a direction to deposit the same with bank as per date mentioned in cheques.

It is astonished that when order was passed in presence of Bank's Officer and his lawyer, then, the ld. Counsel for bank has received the DD and cheques, but later on, he *refused and lastly he kept the DD & Cheques on my table, but this court directed to take it, if he is not interested to take it as per direction of Bank Officer, he could not keep it on the table of PO. This type of bank officer and his lawyer is also not accepted. Because of this, in action and non-cooperative attitude of bank, this Court directs the Recovery Officer, if the borrower pay as per above order, then he may not be proceeded further for sale, and if, the cheques are bounced, then the Recovery Officer will proceed with sale. As I am passing this order because of rough attitude of bank side of peculiar circumstances of this case to save harassment of applicant.*

A copy of this order be given to parties and also Recovery Officer."

(underlined for emphasis)

17. The order does not indicate the jurisdiction, which the DRT exercised while passing the said order. Against the said order of the DRT, Patna, the Bank preferred statutory appeal before the Debt Recovery Appellate Tribunal giving rise to Appeal No. R-79 of 2014. The appeal has been allowed by the Debt Recovery Appellate Tribunal, Allahabad, by a judgment and order dated 13.02.2014, operative portion of which reads as under : -

"17. The additional plea urged and argued before this Tribunal about the fraud is

also devoid of force. The respondents were free to take every objection in their written statement which they had filed before the Tribunal below and that was considered also. But no such objection was raised there and even, it was not specifically raised in the instant recall application. However, it is settled proposition of law that if any fraud is found or any party gets any decree or order by playing fraud, then the court can modify or change its order as laid down in the referred judgments, but in this matter, there are no sufficient grounds to infer that any type of fraud has been committed by the Bank. It is true that the loan was sanctioned for a sum of Rs.153.00 lacs and the disbursement was made for Rs.93.00 lacs, but the Bank has never claimed that the total sanctioned amount was ever disbursed. The disbursement of loan was made keeping in view the stages of upcoming. The respondents have also conceded for the amount of Rs.93.00 lacs taken from time to time. The claimed figure mentioned in the O.A. was Rs.153.00 lacs, but it was not the amount which was actually disbursed. The figure arrived at is by adding the interest on the principal amount. So, there is no ambiguity that the Bank had mis-represented or played fraud while submitting the documents before the DRT.

18. It is pertinent to mention that the documents submitted by the Bank are admissible in evidence under section 4 of the Bankers' Book of Evidence Act and the Tribunal below had rightly relied on them. If the borrowers had any objection to the documents or accounting, they were free to get the copies under section 6 of the Act which they have not opted. Therefore, they are estopped to raise the question of computation of amount at this stage and have also failed to prove any fraud.

19. In view of the aforesaid, the impugned order passed by the Tribunal below is illegal, without jurisdiction and suffers from perversity and arbitrariness, hence, is not sustainable and the appeal deserves to be allowed.

20. Accordingly, the appeal is allowed and the impugned order dated 05.05.2014 passed by the Tribunal below is quashed and set aside. As a consequence of it, any steps taken by the Recovery Officer in compliance of the impugned order shall also stand nullity. As the matter has already become quite old, the Tribunal below is directed to ensure the expeditious disposal of the R.P. Case, if any, pending in this matter."

18. The appellate Tribunal, Allahabad, held the order of the DRT, Patna, to be illegal, without jurisdiction, suffering from perversity and arbitrariness.

19. The petitioners preferred review application against the order dated 13.02.2018 before the appellate Tribunal, Allahabad, which came to be registered as M.A. No. 37 of 2018, again stating emphatically that the Company had received only 70 lakhs and that the respondent Bank had also stated that an amount of Rs.86 lakhs only was disbursed. The review application was also dismissed by an order dated 14.10.2019. The said judgment of the appellate Tribunal passed in Appeal No. R-79 of 2014 and order dated 14.10.2019 passed in review application being M.A. No. 37 of 2018 are under challenge in the present writ application.

20. Before coming to the pleadings and other documents brought on record by the respondents as also other pleadings in the nature of supplementary affidavit filed by the petitioners and the petitioners' reply to the counter affidavit, I must record here that the pleadings in the writ application are exhaustive and elaborate. For reasons best known to the petitioners, there is no disclosure made in the writ application as to under which provision of law, the petitioners had filed M.A. No. 150 of 2014. It is, however, apparent from the order of the appellate Tribunal, Allahabad, dated

13.02.2018 that the said order of the Tribunal dated 05.05.2014 was passed in M.A. No. 150 of 2014, which was an application filed under Section 19(25) of the RDDBFI Act. Section 19(25) of the RDDBFI Act reads as under : -

> *"19(25). The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."*

21. In the counter affidavit filed on behalf of the Bank, a plea has been taken that the petitioners have not approached this Court with clean hands and that they have not disclosed material facts. It has been disclosed, *inter alia*, referring to the loan sanction letter dated 08.10.2003 that the cost of the project was 2.25 crores and after taking margin money, the Bank had sanctioned the said sum of Rs.1.35 crores. The amount of margin money was to be invested by the petitioners in the project. The term loan was released in phases depending upon the progress in work after site/job inspection. As diversion of loan amount was detected during visit of the bank officials on the site of the project and it was found that the construction work was almost at halt, the petitioners were requested to expedite construction. It was further noticed that whereas the branch had already disbursed loan to the tune of Rs.86 lakhs in phases as against eligibility of 51.7 lakhs and, therefore, again, the petitioner Company was asked to expedite completion of work. It has also been stated that the petitioners had got disbursed 25 lakhs from the Bank at the initial stage of construction of unit and on enquiry it was found that the funds were taken by one Sri Harshdeo, said to be proprietor of M/s Vishwakarma Engineering Works and nephew of petitioner No.3. The said M/s Vishwakarma Engineering Works is a sister concern of petitioner No.1. The said amount of Rs.25 lakhs was disbursed for trolleys etc., which was not found at the site. There is statement made in the counter affidavit regarding the developments which had taken place under the provisions of the SARFAESI Act, which I shall be referring to later.

22. In the supplementary affidavit filed on behalf of the petitioners, it has been asserted that the appellate Tribunal has committed error of record by mentioning that the petitioner had contended that a loan of Rs.153 lakhs was sanctioned, but, as a matter of fact, a sum of Rs. 93 lakhs only and odd was sanctioned. The petitioners have brought on record, by way of supplementary affidavit, statement containing the details of disbursement made in the loan account of the borrower and deposits made by the borrower on different dates with calculation of outstanding balance due as on 01.01.2020 by way of Annexure-23, prepared by approved government chartered accountant.

23. A supplementary counter affidavit has been filed denying the statement made in paragraph 3 of the supplementary affidavit filed on behalf of the petitioners, wherein, referring to the letter dated 09.03.2017, issued by the Bank, it has been mentioned that till 09.03.2007, the Bank had disbursed loan to the tune of Rs.86 lakhs in phases. It has also been stated that the petitioners had made a categorical averment in paragraph 16 of the writ application, being C.W.J.C. No. 15468 of 2012, to the effect that the Bank had disbursed a sum of Rs.91.13 lakhs and the last disbursement of Rs. five lakhs having been made on 01.08.2007. It has accordingly been stated on behalf of the Bank in the said supplementary counter affidavit that a false and inconsistent plea taken on behalf of the petitioners that a total sum of Rs.86 lakhs (in the supplementary affidavit)/70 lakhs (in the writ petition), was disbursed.

24. The Bank has brought on record the application which was filed by the petitioners under Section 19(25) of the RDDBFI Act, which has given rise to M.A. No. 150 of 2014 by way of Annexure-J series to the supplementary counter affidavit.

25. At this juncture, it would not be apt to notice relevant undisputed facts arising out of issuance of notice under Section 13(2) of the SARFAESI Act in relation to the same transaction. The Company had filed a writ petition before this Court as has been noticed above giving rise to C.W.J.C. No. 15468 of 2012, which was dismissed by an order dated 19.10.2012 passed by this Court. The introductory sentence of the order of this Court dated 19.10.2012 reads as under : -

> *"From the very beginning of his submissions, Mr. Sanjay Singh, learned counsel for the petitioners, restricted himself to the legal issues being raised by him in the case, and rightly so, because, had he entered into the thickets of the disputed facts, it might have been difficult for him to successfully ward off the charge of under utilization, non-utilization and diversion of fund, made available to the petitioner by the Bank in phases, as per its policy, more particularly in the light of the approved valuer's report dated 16.02.2012, annexed with the counter affidavit as Annexure – K."*

26. Evidently, this Court, at the outset, noticed the difficulty for the Company to successfully ward off the charge of under-utilization, non-utilization and diversion of fund, made available to the petitioners by the Bank in phases as per its policy, more particularly, in the light of the approved valuer's report dated 16.02.2012 annexed with the counter affidavit as Annexure-K in the said writ application.

27. In the said order of this Court dated 19.10.2012 (supra), the pleading in paragraph 22 of the counter affidavit filed in that case by the Bank has been noted, wherein, it was specifically mentioned that when the petitioners neglected to repay the loan amount, his account has become NPA, but subsequently some amount was deposited in the account and the account of the petitioner had become performing asset and as such some loan amount was disbursed thereafter. The statutory officer at the time of audit found the account of the petitioner unsatisfactory and as such the account was declared NPA 'with effect from 31.03.2007'. Taking into account the aforesaid uncontroverted statement, this Court recorded that the same gave an indication that the account of the petitioner was declared NPA 'the second time from retrospective date', though in the meanwhile some loan amount was disbursed to it. It is mentioned, at this stage, that the petitioners have insisted not only in the pleadings but also in course of argument that there was no disbursement of any amount after the effective date when the account was classified NPA.

28. It is significant to note here that this Court, while dismissing the writ application by the aforesaid order dated 19.10.2012, did observe that so far the matters of accounting, regularization of loan accounts, release of installments of remaining amount of loan or drawing up a fresh schedule for repayment are concerned, it was for the contracting parties to come to a meeting point in accordance with the policies and guidelines of the RBI for which the petitioners shall have the liberty to take steps in accordance with law or to approach the Tribunal under the provisions of Section 17 of the SARFAESI Act. There is nothing to demonstrate that the petitioners, at any point of time, invoked the provisions of Section 17 of the SARFAESI Act. The Company thereafter preferred Letters Patent Appeal giving rise to L.P.A. No. 1903 of 2012. From an order passed by a Division Bench of this Court dated 16.01.2013 in L.P.A. No. 1903 of 2012, it appears that a cheque in the sum of Rs.10 lakhs was tendered to learned counsel for the Bank during the course of proceeding of the said case against the outstanding dues of the appellants. An assurance was given to this Court that the cheque when presented before the Bank would be cleared without any difficulty. It was further stated before this Court that the appellant was making efforts to clear those outstanding dues to the Bank by

31st March. Learned counsel for the Bank, however, informed the Division Bench of this Court that as on date, the outstanding dues of the appellant was more than three crores. He also informed the Court that the earlier cheque, issued by the appellant-Company had been dishonoured. The Division Bench further observed in the order dated 16.01.2013 that if the appellants make a proposal for settlement of accounts with precise schedule for payment, the Bank will consider and respond to the same. The Division Bench also observed as under : -

> *"We do expect that the appellants will within next one month pay at least Rupees fifty lakhs against the outstanding dues of the Bank."*

29. Again, when the matter was taken up on 15.05.2013, it was submitted on behalf of the petitioners, who were appellant before the Division Bench, that the Company intended to settle the account with the Bank provided the Bank released the property mortgaged and allowed the appellants to dispose of the said property. The Court refused to accede to such submission made on behalf of the petitioners and adjourned the matter for 10.07.2013 with the following observations : -

> *"It is evident that except the sum of Rupees ten lakhs which the appellants were*

compelled to pay, the appellants have not paid a farthing to the Bank against their outstanding dues. We can have no sympathy for the appellants.

As the appellants intend to settle the accounts with the Bank, we allow the appellants some more time to work out the settlement, but not without condition.

At the request of Mr. Sanjay Singh, stand over to 10th July 2013 on condition that the appellants will, within two weeks from today, pay a sum of Rupees twenty one lakhs to the Bank towards its outstanding dues."

30. On 12.07.2013, the Division Bench passed the following order : -

"Learned advocate Mr. Sanjay Singh appears for the appellants. He concedes that the appellants have not been able to comply with the direction issued by this Court on 15th May 2013. Although there was a direction to pay a sum of Rs. twenty one lakhs within 15 days from the date of the order, almost two months thereafter the appellants have not been able to pay more than nine lakhs to the respondent Bank. At the request of Mr. Sanjay Singh, stand over to 30th August 2013."

31. The Division Bench finally dismissed the said L.P.A. No. 1903 of 2012 with following observation : -

"This Appeal was entertained on 16th January 2013 on the appellants' tendering a cheque of Rs. 10 lakhs to the Bank against its outstanding dues. It was further observed that by April 2013 the appellants would pay another Rs. 50 lakhs against the outstanding dues. That was, however, not done. On 15th May 2013, a further order was made against the appellants to pay a sum of Rs. 21 lakhs to the Bank by 10th July 2013.

We are informed at the Bar that pursuant to the said direction dated 15th May 2013, the appellants have paid a sum of Rs. 9 lakhs on 6th July 2013.

Today, learned advocate Mr. Sanjay Singh has appeared for the appellants. He states that today he has brought another Rs. 48 lakhs by a post dated cheque. Learned advocate Mr. Ranjeet Kumar Pandey has appeared for the Bank. He has refused to accept the post dated cheque.

In our opinion, not only the appellants have failed to comply with the direction issued on 15th May 2013; after more than two months from the last date for compliance, the appellants have produced the post dated cheque, not acceptable by the Bank.

Lack of bona fide on the part of the appellants is writ large in their action / inaction."

32. The Company had preferred appeal before the Supreme Court, giving rise to S.L.P. No. 32485 of 2013 putting to challenge the Division Bench decision dated 18.09.2013 rendered in L.P.A. No. 1903 of 2012. Following order was passed in the said case by the Supreme Court on 25.10.2013 : -

> *"Subject to deposit of Rs. 50 Lakhs by the petitioners with the Registry of this Court within six weeks from today, notice shall be issued to the respondent No. 1 returnable in twelve weeks.*
>
> *Dasti, in addition to the ordinary process, is permitted.*
>
> In the meanwhile, status quo with regard to security shall be maintained.*"*

33. Evidently, the notice was issued subject to deposit of 50 lakhs and *status quo* with regard to the security shall be maintained. The Supreme Court dismissed the S.L.P. by an order dated 24.03.2014, relevant portion of which reads as under : -

> *"On 25.10.2013, this Court passed the following order:*
>
> *Subject to deposit of Rs. 50 Lakhs by the petitioners with the Registry of this Court within six weeks from today, notice shall be issued to the respondent No. 1 returnable in twelve weeks.*

Dasti, in addition to the ordinary process, is permitted.

In the meanwhile, status quo with regard to security shall be maintained.

2. There is no compliance by the petitioner in deposit of Rs. 50 lacs. Mr. Krishnan Venugopal, learned senior counsel for the petitioner submits that he has the draft of Rs. 50 lacs ready with him.

3. We are not inclined to extend the time in view of the fact that enough indulgence has been shown to the petitioner.

4. Confronted with this, learned senior counsel for the petitioner seeks withdrawal of special leave petition.

5. Special leave petition is permitted to be withdrawn and it is dismissed as such.

6. Upon dismissal of special leave petition as withdrawn, I.A. No. 3 of 2014 for extension of time does not survive and it also stands dismissed."

34. This is an admitted fact that the petitioners have not paid even a single farthing to the Bank despite the aforesaid observation made by the Division Bench of this Court and the Supreme Court. From the order of the Supreme Court dated 25.10.2013 itself, it appears that the Supreme Court had noticed non-compliance by the petitioners in deposit of Rs. 50 lakhs and despite the fact that it was submitted by learned Senior Counsel for the petitioners before the Supreme Court that he had the draft of Rs. 50 lakhs ready with him, the Supreme Court refused to grant any further indulgence.

35. It has been argued on behalf of the petitioners that the proceedings under the SARFAESI Act and the RDDBFI Act are independent of each other. There cannot be any gainsaying that the said two sets of enactments have a common objective of improving the recovery of defaulting loans. In the present case, the matter arising out of invocation of the SARFAESI Act had travelled up to Supreme Court, where the Supreme Court noticed non-compliance of an order requiring the petitioners to deposit a sum of Rs. 50 lakhs. The petitioners themselves were ready to deposit a sum of Rs. 50 lakhs as on 25.10.2013, which move was not entertained by the Supreme Court.

36. The fact remains that the Company did not prefer any appeal against the judgment and order of the DRT dated 17.09.2012 passed in O.A. No. 283 of 2011 as provided under Section 20 of the RDDBFI Act before the appellate Tribunal, which could have been filed within a period of 30 days. Instead, an application was filed for recall of an order passed by the DRT dated 03.09.2013, which was rejected by an order dated

08.11.2012 as not maintainable. The petitioners filed another application, as has been noticed above, for recall of the order dated 17.09.2012, which too was rejected on 04.03.2014. None of the orders were challenged before the appellate Tribunal. Instead, the Company filed an application under Section 19(25) of the RDDBFI Act. I am rather bemused to notice the order, which was passed by the DRT on an application under Section 19(25) of the RDDBFI Act dated 05.05.2014, whereby the amount determined in the judgment of the original application was changed and certain directions were issued.

37. In response to a query made by this Court, Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioners has argued that the DRT has power of review under Rule 5A of the Debuts Recovery Tribunal (Procedure) Rules, 1993. The Court is afraid, the Tribunal could not have treated the petitioners' application filed under Section 19(25) of the RDDBFI Act to be an application for review under Rule 5A of the DRT(Procedure) Rules, 1993. Rule 5 A of the Rules permits any party considering itself aggrieved by an order made by the Tribunal, on account of some mistake or error apparent on the face of the record, apply for review of the order to the Tribunal, which had made the order. A sub-rule (2) bars making of an application for review after expiry of a period of 30 days from the date of the order.

38. Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioners has placed on record written notes of argument running into 50 pages mainly addressing the conduct of the Bank in delaying disbursement of loan amount, which was sanctioned because of which the project in question got delayed. He has submitted that the pleading by the Bank in O.A. No. 283 of 2011 was based on falsehood inasmuch as the sanctioned loan amount was reduced to 92 lakhs by letter dated 19.04.2004 against original sanctioned loan of Rs. 153 lakhs, whereas the Bank sought recovery of a sum of Rs.1,53,38,333/-. He has submitted that there was no pleading by the Bank in its application as to what amount was disbursed and what was the rate of interest. He has referred to a decision of the Supreme Court to make out a case that it was obligatory on the part of the Bank to establish its case before the DRT that a particular sum of Rs.1,53,38,333/- was recoverable and further it was obligatory for the Bank to disclose clearly the amount actually disbursed and chargeable rate of interest. He has submitted that only on the ground that the petitioner Company failed to dispute the said amount, the Tribunal could not have recorded a finding that the Bank was entitled to receive from the defendants jointly and severely (except defendant No.3) the loan and interest amounting to Rs.1,53,38,333/- with *pendente lite* interest and future at contractual rate of interest from 01.10.2011 till realization. He has relied on Supreme Court's decision in case of ***Life Insurance Corporation of India v. Ram Pal Singh Bisen*,** reported in **(2010) 4 SCC 491**, to submit that failure to prove evidence does not amount to an admission nor does it reverses or discharge the plaintiff's burden of proof. He has further submitted that the impugned order dated 17.09.2012 of the DRT does not contain reason as to how the Bank was entitled to receive the said amount of Rs.1,53,38,333/-, which is solely based on the consideration that the Bank officials were acting in public interest and they had no grudge/enmity/ill-will towards the defendants so as to create false evidence. He has contended that the finding recorded by the DRT is unsustainable on the ground also. He has also placed reliance on Supreme Court's decision in case of ***Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others***, reported in **(2010) 13 SCC 336)**, to bolster his contention that it is imperative for the Courts/Tribunals to record reasons and pass speaking orders.

39. He has placed much emphasis on Supreme Court's decision in case of ***United India Insurance Company Limited vs.***

Rajendra Singh and Others **(AIR 2000 SC 1165)** to submit that once an order is found by a Court or Tribunal to have been obtained through fraud or misrepresentation, no Court or Tribunal can be regarded as powerless to recall its own order. Reference has been made to several decisions of the Supreme Court, namely, ***Sushil Kumar Sen Vs. State of Bihar*** **(AIR 1975 SC 1885)**, ***Moseb Kaka Chowdhry Alias Moseb Chowdhry and Another vs. State of West Bengal*** **(AIR 1956 SC 536)** and ***Venture Global Engineering LLC vs. Tech Mahindra Limited and Another***, reported in **(2018) 1 SCC 656**.

40. In my opinion, the decisions, which have been cited on behalf of the petitioners, as noted above, need not be looked into, *inter alia*, considering the conduct of the petitioners, which has been noticed and is being discussed in the present order in the present proceeding.

41. Mr. Ranjeet Kumar Pandey, learned counsel representing the Bank has relied on a Division Bench decision of this Court rendered in case of ***Rajeev Kumar Singh and Others vs. Chairman-cum-Managing Director, Indian Bank and others*** in **L.P.A. No. 610 of 2014** on 11.07.2017. He has relied on the observations made by the Division Bench of this Court in paragraph 33, wherein the Court notice the practice of entertainment of miscellaneous application for reviewing its decision or recall of an order passed by it, affecting merits of the case, which reads as under :

> *"33. We are afraid the Debts Recovery Tribunal kept on entertaining miscellaneous applications one after another and reviewed its decisions on merit as and when and in whatever way it suited the petitioners/appellants. We, therefore, strongly deprecate this approach of the Tribunal and put a word of 'caution' for henceforth. The Debts Recovery Tribunal shall not entertain a miscellaneous application for reviewing it's decision or recall of an order passed by it, affecting merit of the case. The application should be in conformity with the condition mentioned in Rule 5-A and when an error apparent on the face of record is found. As the Appellate Tribunal has remanded the S.A. No. 35/2012 and a writ application is said to be pending against that, at this stage, we refrain ourselves on commenting upon the Appellate Tribunal's order."*

42. He has also referred to the Supreme Court's decision in case of ***T.P. Vishnu Kumar v. Canara Bank***, reported in **(2013) 10 SCC 652**, to submit that since the petitioners did not choose to question the correctness of the order of the DRT, the appellate

Tribunal has rightly interfered with the impugned order of the DRT and the review application has rightly been rejected. He has submitted that in such circumstance there is no occasion for this Court to interfere exercising power of judicial review.

43. I am of the considered view, based on the pleadings and other materials on record that the deponent of the writ petition has made a false statement on oath in paragraph 12 of the writ application that a total sum of Rs. 70 lakhs was disbursed before the account was declared as Non Performing Asset. By making this statement and placing reliance on the guidelines issued by the Reserve Bank of India that no loan amount could have been disbursed after the account having been classified NPA, the petitioners have attempted to mislead this Court so as to make out a case that no loan amount was disbursed beyond 70 lakhs. This statement is falsified on seeing petitioners' own communication dated 27.10.2009 addressed to the DGM, Zonal Office, UCO Bank, Patna, in paragraph 7 whereof it has been mentioned as under : -

> *"7. Again disbursement was stopped and after letter for disbursement vide dated 12.02.07, 28.02.07, 14.03.07, 18.07.07 and 19.07.07 (Letters may be produced if required which is with bank receiving), disbursement was made on 01.08.07 – Rs. 5 lacs after*

stopage period of 6 months which made the Bank contribution to Rs.91.16 lacs and invested margin money is goes to Rs.3.27 cr against the total investment i.e. 3.367 as per Engineer Certificate (Annexure-4).”

44. The said communication is part of Annexure-K to the supplementary counter affidavit filed on behalf of the UCO Bank.

45. The statement that after 31.03.2007, no disbursement was made in the loan account of the petitioner has been deliberately made to mislead this Court inasmuch as this Court way back on 19.10.2012 in its order passed in C.W.J.C. No. 15468 of 2012 had noticed the fact that after the said account had become NPA and some amount was deposited by the borrower in the account, some loan amount was disbursed, but when the statutory auditor at the time of audit found the account of the petitioner unsatisfactory, the account was classified NPA retrospectively with effect from 31.03.2007.

46. The Court deprecates the conduct of the deponent in making the false statement on oath in a proceeding under Article 226 of the Constitution of India in strong terms, as such proceeding are decided on the basis of affidavits. The deponent has attempted to pollute the stream of justice and, therefore, deserves to be prosecuted, in the Court's opinion, in accordance with law for the offences punishable under Sections 193, 196 and 199 of the Indian Penal Code, which are made out against the deponent. I am of the opinion that it is expedient in the interest of justice to direct the learned Registrar General to cause an enquiry in relation to the said offences in accordance with the provisions under Section 340 of the Code of Criminal Procedure.

47. Learned counsel for the petitioner Mr. Sanjeev Ranjan has rightly relied on the Supreme Court's decision in case of ***Rajendra Singh*** (supra), which, in no uncertain terms, declares that fraud and justice never run together. The petitioners' conduct disentitles it from maintaining the application before this Court under Article 226 of the Constitution of India on the basis of apparent falsehood.

48. Coming to the impugned order of the appellate Tribunal dated 13.02.2018, it is evident that the Tribunal did notice the fact that M.A. No. 482 of 2012 was not filed by the borrower with a request that the order passed in O.A. be reviewed. It was rather mentioned in the application that their account had been settled in view of the order passed by the High Court in the writ application. The appellate Tribunal has rightly recorded that the said application could not be treated to have been preferred for review of the judgment passed in the O.A.. The appellate Tribunal has rightly pointed out that though wrong mentioning of the provisions has no bearing on the proceeding, but while reviewing of the order it is the duty of the Court to assign the reason and point out the apparent error, that was to be rectified, which was completely absent. The appellate Tribunal further noted, and rightly so, that if the order was to be changed or modified, the earlier order ought to have been set aside because the final order would have been the one passed in the review application. The appellate Tribunal accordingly held the order of the DRT passed in M.A. No. 150 of 2015 to be a nullity.

49. I do not find any legal infirmity requiring this Court's interference with the impugned order. Mr. Ranjeet Kumar Pandey has rightly placed reliance on Division Bench decision of this Court in case of ***Rajeev Kumar Singh*** (supra), wherein this Court has deprecated the approach of the Tribunal putting a word of caution for the future while entertaining miscellaneous applications one after another. The Division Bench has clearly said that the Debts Recovery Tribunal shall not entertain a miscellaneous application for reviewing its own order or recall of an order passed by it affecting the merit of the case. I find force in the submission made on his behalf while relying on the Supreme

Court's decision in case of ***T.P. Vishnu Kumar*** (supra) wherein the Supreme Court has reiterated the limited scope of judicial review under Article 226 of the Constitution of India in the matters of recovery of dues under the RDDBFI Act, 1993.

50. Before I conclude, I must take note of the consistent view of the Supreme Court that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of litigation (see : **(1994) 1 SCC 1**, *S.P.* ***Chengalavaraya Naidu (Dead) by LRS vs. Jagannath (Dead) by LRS and Others).*** In case of ***Dalip Singh vs. State of Uttar Pradesh and Others***, reported in **(2010) 2 SCC 114**, the Supreme Court has observed that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief. In ***Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) through LRS***, reported in **(2012) 5 SCC 370**, the Supreme Court, noticing the decision in case of ***Ramrameshwari Devi and Others vs. Nirmala Devi and Others***, reported in **(2011) 8 SCC 249**, has held in paragraph 82 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It further observed that it is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. Such problem can be solved or at least can be minimized if exemplary costs is imposed for instituting frivolous litigations. The Court further observed that in appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. For the benefit of quick reference paragraph 82 of the said decision is being reproduced hereinbelow : -

> *"**82.** This Court in a recent judgment in Ramrameshwari Devi [(2011) 8 SCC 249 : (2011) 3 SCC (Cri) 481 : (2011) 4 SCC (Civ) 1] aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimized if exemplary costs is imposed for instituting*

frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

51. In the present case, the petitioners, as has been noticed above, did not choose to prefer appeal against the order of the DRT, Patna, dated 17.09.2012 and kept on filing miscellaneous applications for different purposes including an application under Section 19(25) of the RDDBFI Act. The order passed by the Tribunal has been found to be patently illegal and beyond jurisdiction by the appellate Tribunal and rightly so. In the Court's opinion, the said order of the DRT, Patna, dated 05.05.2014 passed in M.A. No. 150 of 2014 was totally perverse, which has been interfered with by the impugned order passed by the appellate Tribunal, Allahabad. An application seeking review of the said order of the appellate Tribunal has been rejected on some principles relating to limitation of a proceeding for review of a judgment/order. The petitioners have filed this writ application and have now challenged the order dated 17.09.2012 as if it was an appellate forum.

52. For the reasons aforesaid, this writ application is held to be totally frivolous and deserves to be dismissed with cost. This writ application is accordingly dismissed with a cost of Rs.25,000/- (twenty five thousand) to be deposited by the Company with the Bihar State Legal Services Authority, Patna, within six weeks from today with a proof thereof to be submitted with the Registry of this Court within the aforesaid period.

53. As has been directed above, the learned Registrar General shall ensure conducting an enquiry under Section 340 of the Code of Criminal Procedure for prosecuting the deponent for making the statements on oath, which, in the Court's opinion, are false.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	08.07.2021
Uploading Date	09.08.2021
Transmission Date	N/A