IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2032 of 2023

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Bhagwan Prasad Son of Nanhku Prasad Resident of Village-Lalganj Sehra, P.S. and District-Patna, at Present/Permanent-resident of Raghunath Tola, P.O.-Anisabad, P.S.-Gardanibagh, District-Patna.

... ... Petitioner/s

Versus

1. The Central Bank of India through its Regional Manager Regional Officer, Patna.
2. The Regional Manager Central Bank of India, Regional Office, Patna.
3. The Branch Manager, Central Bank of India, Muradpur, Ashok Rajpath, P.S.-Pirbahore, District-Patna.
4. The Authorize Officer/Authorized Signatory Central Bank of India, Regional Office, Patna.
5. Hare Krishna Patel Resident of Raghunath Tola, P.O.-Anisabad, P.S.-Gardanibagh, District-Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar, Advocate
For the Respondent/s	:	Mr. Ajit Kumar Sinha, Advocate
		Mr. Satish Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT
Date : 25-04-2023

Heard learned counsel for the parties.

2. Learned counsel for the petitioner is ready to pay the loan amount by way of installments, which his son has taken from the bank. He has also filed a title suit against his son.

3. Learned counsel appearing for the respondent bank

submits that the petitioner has not come out with clean hands. If he has filed title suit against his son, there is no occasion for his coming before this Court and stating that he shall repay the loan taken by his son, as there is apparently a dispute between the petitioner and his son. He has also not moved any application in the title suit for seeking any injunction relating to the property nor he has moved any application under Section 17 before the D.R.T.

4. I have considered the submissions. The Apex Court, in the case of **Varimadugu Obi Reddy v. B. Sreenivasulu,** reported in **(2023) 2 SCC 168,**. observed as under:-

> *"36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the*

> *law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2 proviso to Section 18 of the 2002 Act.”*

5. In the case of **South Indian Bank Ltd., & Ors., Vs. Naveen Mathew Philip & Anr.,** reported in **2023 SCC Online SC 435,** the Apex Court has frowned upon the High Courts interfering in matters of commercial nature relating to a loner and loanee except in extra ordinary circumstances. Para 18 of the said judgment reads as under:

> “*18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”*

6. Keeping in view of the above, I am not inclined to interfere in this case at this stage. However, if the petitioner approaches the DRT, the application shall be considered with an approach to get the matter sorted out as observed by the Supreme Court where it has stated that the DRT should dispose

of the matters relating to loan by an approach as adopted in mediation proceedings.

7. Granting such liberty to the petitioner, the present writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

Amrendra/-
Item No. 3

AFR/NAFR	
CAV DATE	
Uploading Date	25.04.2023
Transmission Date	