

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5478 of 2023

Ray Ware House through its Proprietor Binda Lal Ray aged about 53 years (male), son of Ramotar Ray, resident of Village- Bhagat Tola, Patel Chowk, Mathurapur, P.S.- Khagaria, District- Khagaria.

... .. Petitioner/s

Versus

1. The Regional Manager, South Bihar Gramin Bank Head Office- Shri Vishnu Commercial Complex, NH- 30, New Bypass, Near B.P. Highway Service Patrol Pump, Asochak, Patna.
2. The Regional Manager, South Bihar Gramin Bank. Sona Jageshwar Complex, Traffic Chowk, near Savitri Cinema, Begusarai.
3. The Branch Manager, South Bihar Gramin Bank South Gamin Bank, Mathurapur Branch, P.S.- Khagaria, District- Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Singh, Advocate
For the Respondent/s : Mr. Mukesh Kumar No.1, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 27-04-2023

Heard learned counsel for the parties.

2. Learned counsel for the petitioner is ready and willing to settle the dispute with the bank.

3. Learned counsel appearing for the respondent bank submits that the petitioner has not 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. 19

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2023
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