

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11299 of 2023

Sonu Kumar Son of Parshuram Singh, Resident of Village- Malahi Babu Tola,
P.O. and P.S.- Malahi Bazar, District- East Champaran, present- Proprietor,
M/S Jai Hanuman Cold Storage at Malahi Babu Tola, P.O. and P.S.- Malahi
Bazar, District- East Champaran ... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Finance Department,
Government of Bihar, Patna.
2. The Branch Manager, UCO Bank Branch, Bettizah, West Champaran.
3. The Authorised Officer/Chief Manager, UCO Bank Zonal Office, Mauryalok
Complex, 4th Floor, Block A New Dak Bungalow Road, Patna, 800001.
... Respondents

Appearance :

For the Petitioner	:	Mr.Umesh Tiwari, Adv.
For the State	:	Mr.Anil Kumar Singh (Gp 26)
For the Bank	:	Mr. Ranjeet Kumar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 19-12-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs :

*“..... for issuance of a Writ in the nature of
Certiorari to quash the Judgment and Order dated
18.4.2023, passed in O.A. No.971 of 2018 by
Presiding Officer, Debt Recovery Tribunal, Patna by
which the application filed by Respondent Nos. 2 and
3 to determine the amount of debts liable to be
recovered from the defendants with interest with
pendent lite and further interest with compound
monthly, rest from sole defendant without considering
the facts stated in I.A. No.527 of 2022 filed by one of
the partner of the Respondent No.1 in compliance of
Order dated 18.11.2022, passed in C.W.J.C. No.15771
of 2022 (Nirmala Devi Vs. The State of Bihar &
others) by this Hon'ble High Court in which the
amounts of Debts paid back by the petitioner's Firm is
stated.....”*



3. Assailing the order of the Debt Recovery Tribunal (DRT) the petitioner is before this Hon'ble Court. It is to be noted at the preliminary stage that the impugned order which is assailed in the present writ petition is the final order passed by the DRT in O.A. No. 971 of 2018. The counsel for the petitioner has vehemently argued that the present writ petition is maintainable under Article 226 of the Constitution of India and that the alternate remedy is not a bar for entertaining the present writ petition and relied on two judgments in the case of **Municipal Council, Khurai vs Kamal Kumar & Anr.** reported in **AIR 1965 SC, 1321**, and in the case of **Smt. Ujjam Bai vs State of Uttar Pradesh** reported in **AIR 1962 SC, 1621**. Learned counsel has also tried to argue on the merits of the case and stated that the Tribunal has not taken into consideration the various grounds raised by the petitioner and has decided the matter in a mechanical manner.

4. Learned counsel for the respondents, on the other hand, has vehemently opposed the maintainability of the case and stated that the petitioner has an alternative and efficacious remedy of filing the appeal before the Debt Recovery Appellate Tribunal and that the present writ petition is not maintainable. Learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in the case of **M/s South Indian**



Bank Ltd. & Anr. Vrs. Naveen Mathew Philip & Anr.
reported in **2023 SCC Online SC 435** and prayed for dismissal
of the present writ petition.

5. Even though the petitioner has tried to argue on the merits of the case and also stated that the present writ petition is maintainable, it is to be noted that the order which is impugned in the present writ petition is a final order passed by the DRT in OA No. 971 of 2018. The provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) provides for filing an appeal under Section 18 of the said Act. Section 18 of the said Act reads as under :

18: Appeal to Appellate Tribunal : Any person aggrieved, by any order made by the Debts Recovery Tribunal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

6. The Hon'ble Supreme Court in **2023 SCC Online SC 435** has deprecated the practice of the High Courts in entertaining writ petition under Article 226 of the Constitution of India, more so, when there is alternative and efficacious remedy of filing a statutory appeal by an aggrieved party against



the orders of DRT. The Hon'ble Supreme Court has categorically held that the High Courts should not entertain writ petitions under Article 226 of the Constitution of India more particularly when there is an alternative and efficacious remedy available to the parties concerned. The above said judgment was rendered in a matter which arisen under the SARFAESI Act and, therefore, the same is applicable on all fours in the present case.

7. Having regard to the fact that the petitioner is having an alternative and efficacious remedy of filing a statutory appeal under Section 18 of the SARFAESI Act against the final order of the DRT passed in OA No. 971 of 2018 this Court is not inclined to entertain the present writ petition and the same is **dismissed** granting liberty to the petitioner to file an appeal within a period of 4 weeks from the date of receipt of a copy of this order. It is made clear that this Court has not gone into the merits of the case and disposed off this writ petition leaving all issues open and to be adjudicated by the DRAT.

(A. Abhishek Reddy , J)

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