IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25163 of 2013

==

1. M/s S.S. Engineering Corporation through Uday Narayan Singh.
2. Uday Narayan Singh S/O Late Surendra Narayan Singh Resident Of Village- Kodandan, P.S- Shaskur, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The Central Bank Of India and Anr 1970 Having Its Head Office At Chandramukhi, Nariman Point Mumbai- 400021 And A Branch Interalia At Bhagalpur, P.O and P.S- Bhagalpur, District- Bhagalpur Through Its Branch Manager.
2. The Branch Manager, Central Bank Of India Bhagalpur Branch, P.O and P.S- Bhagalpur, District- Bhaga

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Shambhu Nath Choubey, Advocate
For the Respondent/s	:	Mr.Ajay Kumar Sinha, Sr. Advocate
		Mr. Ajit Kumar Sinha, Advocate

==

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL ORDER

8 28-03-2024 The writ petition is filed by the petitioners challenging the order dated 08.11.2012 passed by the Presiding Officer, Debt Recovery Tribunal, Patna in Review Application No.08 of 2012 arising out of R.P. No.15 of 2006 against the certificate judgment dated 02.02.2006 and judgment dated 21.12.2009 D.R.T. Patna in P.T. No.02 of 2001 and also challenging the rejection order dated 13.06.2012 of review application and for the order passed in M.A. No.243 of 2012 wherein it was ordered to pay Rs.95 lakhs.

2. The brief facts of the case are that the petitioners

uncle Late Mahadeo Singh took financial assistance from the respondent Bank in the year 1972 for proprietorship of his firm namely M/s S.S. Engineering Corporation, for

(a) Cash Credit Key Loan Limit of Rs.50,000/-

(b) Cash Credit Open Limit of Rs.25,000/-

Total being Rs.75,000/-.

3. The respondent bank filed a Title Suit No.174 of 1989 for an amount of Rs.13,47,412.38 paise. Mahadeo Singh is the main loanee who died during the pendency of the suit and his legal heirs were substituted. Petitioner is one among them. The respondent Bank has mentioned in its plaint that the following debit balance confirmation letters thereby he has accepted the correctness of the loan account and signed the balance confirmation from 05.01.1976 to 06.10.1986 for Rs.3,49,766.40 and in the open loan account confined was Rs.1,84,096.78 only.

4. It is the contention of the learned counsel for the petitioners that the charging of interest is illegal and Bank cannot be allowed to do the same. The total amount even after adding of interest would be only Rs.5,34,863.18 as on 06.10.1986 and it will never be Rs.13.47,412.38, that to, just within three years.

5. The suit was filed on 03.10.1989 and later it was transferred to Debt Recovery Tribunal and was numbered as P.T. No.2 of 2001 which was decided ex-parte on 21.12.2009 for an amount of Rs.13,47,412.39. During the pendency of the said P.T. No.2 of 2001 an interim certificate of Rs.5 lakhs was issued against the petitioners on 02.02.2006 and thereafter a demand notice was issued by the Recovery Officer on 23.03.2006, demanding an amount of Rs.12,64,875/-. The property mortgaged to the Bank was attached vide order dated 31.01.2007 and 21.02.2008. After that attachment order a decree was passed for Rs.13.47,412.39 on 21.12.2009. Further the Recovery Officer issued auction notice and fixed reserve price property for Rs.85 lakhs.

6. It is the further contention of the learned counsel for the petitioners that the petitioners has filed M.A. No.243 of 2012 praying that the auctioning the property is bad in law and the demand for Rs.85 lakhs is an excess price, but the M.A. was disposed of with a direction to pay more amount of Rs.10 lakhs by order dated 13.06.2012.

7. It is the contention of the learned of the learned counsel for the petitioners that the orders of the DRT as well as the review application and M.A. applications are illegal,

arbitrary and they are likely to be set aside. It is the specific submission of the learned counsel for the petitioners that he has availed the amount of Rs.75,000/- in the year 1973 and by 06.10.1986 amount demanded by the Bank is Rs.5,34,863.18 and the decree was passed for Rs.13,47,412.38 which is more than ten times of principal amount i.e. bad in the eye of law and he relied upon the judgment of the Apex Court in **Mhadagonda Ramgonda Patil & Ors vs Shripal Balwant Rainade & Ors.**

> "We may now consider the second question as to whether the rule of Damdupat is applicable to a mortgage transaction. Admittedly, it is an equitable rule debarring the creditor to recover at any given time the amount of interest which is in excess of the principal amount due at that time. It is urged by the learned Counsel appearing on behalf of the appellants that the rule is applicable only to a simple loan transaction and not to a transaction of mortgage. We are unable to appreciate this contention. In every mortgage there are two aspects, namely (i) loan and (2) transfer of interest in immovable property. As mortgage is principally a loan transaction, we do not find any reason why the rule of Damdupat which is an equitable rule should not apply also to mortgage."

8. On the other hand, the learned counsel for the Bank filed a detailed counter contending that the writ petition itself not maintainable as the petitioners had alternative remedy of appeal, against the orders of the DRT, Patna and without availing the remedy of appeal, the writ petitioners filed a review

application which was also dismissed by the DRT as is barred by limitation.

9. It is specific contention of the learned counsel for the petitioners that the Debt Recovery Tribunal has passed its judgment on 21.10.2009 and it is an ex-parte order and the petitioners has not contested the matter before the Debt Recovery Tribunal. Further the second petitioner though made his appearance before the Debt Recovery Tribunal has not even filed the written statement and was get exparte.

10. It is also contention of the learned counsel for the respondent that the petitioners has not made an efforts to challenge the exparte orders of the Debt Recovery Tribunal and further did not prefer an appeal before the Debt Recovery Appellate Tribunal. After lapse of more than two years the petitioners have filed MA No.243 of 2012 for stay of recovery proceedings. It is also submitted, that the petitioners has already deposited an amount of Rs.85,00,000/- with the Bank and in view of the directions of the Debt Recovery Tribunal and as additional amount of Rs.10 lakhs was also deposited. Later the loan account was closed in view of the orders in M.A. No.243 of 2012 of Debt Recovery Tribunal, Patna. It is also contended by the learned counsel respondents that subsequent to the

payments of the amounts the petitioner has preferred an review petition and said that petition was dismissed as not maintainable vide order dated 08.11.2012. Further, the present writ petition was filed, subsequent to the dismissal of the review and as such the writ petition itself is not maintainable, as it is devoid of merits.

11. Heard learned counsel for the petitioners as well as learned counsel for the respondents.

12. The petitioners filed a review petition i.e. R.A. No. 8 of 2012 which was dismissed vide order dated 08.11.2012 on the ground it was barred by limitation as the petition was filed, after three years of the order of the D.R.T.

13. On perusal of the record, it is evident that the petitioners have deposited an amount of Rs.95,00,000/- to the Bank. In view of the full and final settlement of the loan account the bank account of the petitioner was closed. Later a review petition was also dismissed by the DRT on 08.11.2012. If at all petitioners are aggrieved by the orders of DRT in P.T. No.02 of 2001, judgment dated 21.12.2009, the petitioners ought to have preferred an appeal before the Debt Recovery Appellate Tribunal, Allahabad. But the petitioners has not preferred appeal and without preferring an appeal, the present writ petition was

filed challenging the orders of DRT as well as review petition dated 21.10.2009 and 08.11.2012 respectively.

14. Admittedly, the Bank loan account was closed as the petitioner himself has deposited Rs.85 lakhs and further deposited Rs.10 lakhs as per the orders in MA No.243 of 2012 dated 13.06.2012.

15. At this juncture, the learned counsel for the petitioners submits that the Bank has not returned the documents which were given as security at the time of availing the loan. As the petitioner has paid the entire loan amount (Principal + Interest) as ordered by the DRT in M.A. No.243 of 2012 dated 13.06.2012, the respondent Bank shall forthwith returned the documents to the petitioners, as and when he approaches the Bank, if they are not returned.

16. With the aforesaid above, the writ petition is disposed of.

(G. Anupama Chakravarthy, J)

Prakash Narayan

U			