# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.7191 of 2014**

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1. Smt. Alka Jalan, Daughter of Late Shanti Prasad Jain R/o 14, Dover Park, Kolkata - 700019
2. Smt. Indu Jain, Legal Heir of Shri Ashok Jain (Since Deceased) Wife of Late Ashok Jain R/o 6, Sarda Patel Marg, New Delhi - 110021
3. Sri Vineet Jain, LEGAL HEIR OF SHRI ASHOK JAIN (SINCE DECEASED) Son of Late Shri Ashok Jain R/o 15, Moti Lal Nehru Marg, New Delhi
4. Sri Sameer Jain, LEGAL HEIR OF SHRI ASHOK JAIN (SINCE DECEASED) Son of Late Shri Ashok Jain R/o 15, Moti Lal Nehru Marg, New Delhi

... ... Petitioner/s

Versus

1. Punjab National Bank
   (Earlier United Bank Of India)
   A body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and carrying on business inter alia at Station Road, Patna -1) and also head office at 16, Old Court House Street, Kolkatta.
2. Debt Recovery Tribunal, Patna through its Registrar situated at Bank Road, Patna

….Respondents

3. Shree Krishna Gyanoday Sugar Limited, a company incorporated and registered in terms of the Companies Act, 1956, having its office at Fraser Road, Patna 1 and also at 3B, Little Russel Street, Kolkatta
4. Sri Manoj Kumar Jain
   9, Alipore, Park Lane, Kolkatta
5. Sri Alok Jain
   A 13, West End Colony, New Delhi - 57

... ... Proforma Respondent/s

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**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | M/s Ashish Verma<br>Siddhartha Prasad, Advocates |
| For the Respondent Bank: | | M/s Ajay Kumar Sinha, Sr. Advocate<br>Binod Bihari Sinha,<br>Amarjeet Chaudhary<br>Pravin Kumar, Advocates |

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY**

**ORAL JUDGMENT**

**Date : 30-09-2024**

**<u>Re.: I.A. No. 3598 of 2014</u>**

1. During the pendency of the Writ petition, I.A. No. 3598 of 2014 has been filed by the petitioners seeking permission to amend the Writ petition.

2. Further another I.A. No. 4 of 2024 has been filed for amending the prayers and to incorporate the amendments as had been sought in I.A. No. 3598 of 2014. As I.A. No. 4 of 2024 is in force, the Learned counsel for the petitioners seeks permission to withdraw I.A. No. 3598 of 2014.

3. Accordingly, I.A. No. 3598 of 2014 is dismissed as withdrawn.

**<u>Re.: I.A. No. 2 of 2023</u>**

4. In the present Writ petition, respondent no. 2, Smt. Indu Jain, who is wife of Sri Ashok Jain, died on 13th

May, 2021, therefore, the present application was filed by the petitioner Nos. 3 and 4 the legal heirs of Smt. Indu Jain seeking permission to pursue the Writ petition to file amended memo of parties to the Writ petition.

5. Accordingly, I.A. No. 2 of 2023 is hereby allowed.

**Re:- I.A. No. 3 of 2023**

6. I.A. No. 3 of 2023 is filed to permit the petitioners to amend the memo of parties in the light of the merger of "United Bank of India" into "Punjab National Bank". It is prayed that the word "United Bank of India" may be read as "Punjab National Bank". It is relevant to mention that vide Gazette of India Notifications G.S.R. 153(E) dated 04.03.2020, amalgamation of Oriental Bank of Commerce and United Bank of India with Punjab National Bank was announced which came into force on 1st April, 2020 and, thereafter, the respondent No. 1/ United Bank of India was amalgamated with Punjab National Bank. It is, therefore, just and necessary to allow I.A. No. 3 of 2023. The registry is directed to make necessary amendment in the cause title and in the contents of Writ petition by

substituting "Punjab National Bank" in place of "United Bank of India" as respondent No. 1.

7. Accordingly, I.A. No. 3 of 2023 is allowed.

**Re.: I.A. No. 4 of 2024**

8. I.A. No. 4 of 2024 is filed by the petitioners to amend the prayers and for seeking a relief that this Court may be pleased to pass a Writ of Certiorari, Mandamus or any other appropriate Writ, order or direction :

> *"(a) Dismissing/Quashing PT No. 254 of 1998 pending before the the the Learned Debt Recovery Tribunal, Patna, against the petitioners."*

9. The petitioners have also sought permission to amend the Writ petition as earlier sought vide IA No. 3598 of 2014. This Court thinks it necessary to deal I.A. No. 4 of 2024 along with the main Writ petition.

**Re.: CWJC No. 7191 of 2014**

10. The petitioner No. 1/Smt. Alka Jalan is the daughter of Late Sri Shanti Prasad Jain. Respondent No. 4/ Sri Manoj Kumar Jain and respondent No. 5/Sri Alok Jain and Sri Ashok Jain are the sons of Late Sri Shanti Prasad Jain. Sri Ashok Jain died on 03.02.1999 and his widow Smt. Indu Jain is arrayed as petitioner No. 2. Sri Vineet

Jain/petitioner No. 3 and Sri Sameer Jain / petitioner No. 4 are sons of Late Sri Ashok Jain.

11. For the sake of convenience the status of the parties before the Debt Recovery Tribunal and this Court is recorded as under:

| Party | Status before this Court | Status before Debt Recovery Tribunal |
|---|---|---|
| Smt. Alka Jalan, | Petitioner no. 1 | Defendant no. 5 |
| Smt. Indu Jain | Petitioner no. 2 | Defendant no. 2(A) |
| Sri Vineet Jain, | Petitioner no. 3 | Defendant no. 2(B) |
| Sri Sameer Jain, | Petitioner no. 4 | Defendant no. 2(C) |
| Punjab National Bank (Earlier United Bank Of India) | Respondent no. 1 | Plaintiff |
| Debt Recovery Tribunal, Patna | Respondent no. 2 | |
| Shree Krishna Gyanoday Sugar Limited, | Respondent no. 3 | Defendant no. 1 |
| Sri Manoj Kumar Jain | Respondent no. 4 | Defendant no. 3 |
| Sri Alok Jain | Respondent no. 5 | Defendant no. 4 |

12. Initially, United Bank of India, which has been merged with Punjab National Bank filed a Money Suit against the 3rd respondent Shree Krishna Gyanoday Sugar Limited, the Principal Borrower and against Smt. Alka

Jalan, Sri Ashok Jain, Sri Manoj Kumar Jain and Sri Alok Jain, as defendants for recovery of Rs.1,81,08,014.19, *pendente lite* and for future interest before the Subordinate Judge I, Patna in the Money Suit No. 452 of 1985. The said Suit was filed on 20th December, 1985. It is specifically alleged in the Suit that originally Late Shanti Prasad Jain had guaranteed the Bank regarding the payment of all debts and liabilities of respondent No. 3. Even after Nationalization of the Bank, he claimed to be a guarantor. It has been further alleged that petitioner No. 1 Alka Jalan, respondent Nos. 4 and 5 being the legal heirs of Late Shanti Prasad Jain, on account of the continuing guarantee were jointly and severally held liable for the debts and liabilities of the respondent No. 3.

13. As per the plaint, the respondent no. 3 herein was a constituent of United Bank of India till, July 19, 1969 who enjoyed credit facilities with the Bank. In July 1969, the United Bank of India Ltd. under the provisions of Banking Companies (Acquisition and Transfer Undertaking) Act, 1970 was Nationalized. After nationalization, respondent no. 3 became a constituent of

the Bank and enjoyed credit facilities.

14. It has been stated in the plaint that Originally Late Shanti Prasad Jain had guaranteed to the Bank the payment of all debts and liabilities of respondent no. 3 and he also stood as a guarantor even after nationalization. It is relevant to mention that Late Shanti Prasad Jain died in the month of October 1977. The respondent Nos. 4 and 5 who are the sons and the petitioner No. 1 is the daughter of Late Shanti Prasad Jain and are the legal heirs, arrayed as defendants in the plaint. It was stated that the borrower (respondent No. 3) hypothecated the stock amounting to Rs. 74.07 lakhs and created mortgage/charge for Rs. 80.60 lakhs which was duly registered on 25.08.1977 with the Registrar of Companies, Bihar at Patna. Sri Ashok Jain (defendant No. 2) executed a personal letter of continuing guarantee dated 29.05.1982 granting the payment to the Bank, of all debts and liabilities in present as well as in future. The contents of the plaint further disclose that the respondent no. 3 had executed a loan document on 03rd January, 1983 but Respondent no. 3 defaulted in the re-payment of loan amount and the Bank issued a demand

notice for payment of Rs.1,81,08,014.19 to the respondent no. 3, petitioner no. 1, Sri Ashok Jain, and respondent no. 4 and 5 on 14.12.1985 to pay the outstanding loan. As the said persons failed to repay the said loan amount, the Suit was preferred by the Bank. The cause of action for filing the Suit is stated to have arisen on 03rd January, 1983.

15. Initially, Written statement was filed by the Respondent no. 3 (Principal Borrower), contending that the Government of Bihar through the Ordinance No. 38 of 1985 followed by the Bihar Sugar Undertakings (Acquisition) Act, 1985 (Bihar Act No. 12 of 1985), published in the Gazette on 16.12.1985 had acquired the respondent no. 3's business (Borrower's business), related to Sugar Mills, namely (i) S.K.G. Sugar Ltd. Hathwa, Gopalganj, (ii) S.K.G. Sugar Ltd., Siwan and (iii) S.K.G. Sugar Ltd. Lauriya, West Champaran. The said undertakings were operating as a Unit of Bihar State Sugar Corporation, a Company owned by Government of Bihar. The Written statement of the Principal Borrower / respondent No. 3 further contends that in terms of Section 3 of the said Act, the three Sugar Mills stood transferred and exclusively

vested with the State of Bihar. Further, Section 4(1) of the Bihar Sugar Undertakings (Acquisition) Act, 1985, all properties of respondent no. 3 vested with the State Government / Corporation under Section 3, by force of such vesting, Principal Borrower was freed and discharged from any trust, obligation, mortgage, charge lien and all other encumbrances. The Bank was entitled to claim all dues from the State Government under Section 7 of the Bihar Sugar Undertakings (Acquisition) Act, 1985, and not otherwise or from anybody else. Further, the Written statement also disclose about the other Sections of the said Act, in terms of which the Bank had to address its grievance to recover the dues from the compensation received from the State Government and not from the Principal Borrower.

16. The Written statement filed by Sri Ashok Jain, petitioner no. 1 and other respondents are also in lines as of the Written statement of the Principal Borrower.

17. The Money Suit filed before the 1$^{st}$ Subordinate Judge, Patna on 20.12.1985 was transferred to Debt Recovery Tribunal, Patna (Debt Recovery Tribunal/Tribunal) on 28.01.1997.

18. The 2nd defendant in the Suit i.e. Sri Ashok Jain, son of Late Shanti Prasad Jain died on 3rd February, 1999. Pursuant to the demise of Sri Ashok Jain, his legal heirs i.e. Smt. Indu Jain, his wife, (petitioner No. 2), Sri Vineet Jain (petitioner No. 3) and Sri Sameer Jain (petitioner No. 4) his sons were brought on record. The legal heirs of Sri Ashok Jain also filed a Written Statement before the Debt Recovery Tribunal, Patna.

19. It is also relevant to mention that the Bank and the Principal Borrower(respondent no. 3) arrived to a compromise. The said compromise was taken on record by the Debt Recovery Tribunal, Patna vide order dated 13.09.2002 and the proceedings were disposed with the following order:

> *"Sri P.K. Nanda, Law Officer of United Bank of India is present. On behalf of defendants Id. counsel Sri Barmeshwar Tiwary is present.*
>
> *Law Officer of the Respondent no. 1 has filed a letter on behalf of Respondent no. 1 signed by the Chief Manager (Recovery), which is as follows:*
>
> *Recovery/Com/781/2002, February 14, 2002.*
> *The Chief Regional Manager,*
> *United Bank of India.*

*Bihar Region.*

*Dear Sir,*

*Re.: Settlement of Bank's dues by compromise in the A/c. S.K.G. Consolidated Ltd. (previously S.K.G Sugar Ltd.) with Patna Branch.*

*The competent Authority of the Bank has approved the compromise settlement in the captioned A/c whereby the borrower is required to pay Rs.100.00 lacs (Rupees One hundred lac) only under the following terms:*

*1-(a) Total Settled Amount :Rs.100.00 lac*

*(b) Repayment Terms*

*To be paid by March, 2002 subject to the approval of BIFR.*

*(c) Release of Security*

*On receipt of the entire amount of the settled dues, securities will be released and 'No Due Certificate' will be issued as per H.O. guidelines.*

*(d) Terms of Settlement will be filled at Debt Recovery Tribunal/Civil Court on receipt of the full settled amount.*

*(e) The sanction is valid subject to payment of settled amount as per terms of settlement Bank reserves the right to withdraw the relief and concessions as stated herein above and revert to the dues prior to the settlement along with further interest thereon in case of default in payment of settled dues and non-compliance of other terms of*

*settlement.*

*2. Sanction letter is to be sent to the borrower duplicate immediately, incorporating all the terms of sanction therein. Borrower will return the duplicate copy of the sanction letter accepting the terms, and conditions of the settlement and the same will be retained in the Branch record.*

*3. Regarding eight(8) number of Bank guarantees aggregating to Rs.3,00,725/-, the borrower company should be advised to keep 100% margin in "NO LIEN A/C" till the date of adjustment.*

*Please keep us informed of the recovery made in the A/c. from time to time for onward reporting to Higher Authority.*

*Yours faithfully,*

*Chief Manager*

*(Recovery).*

*Law officer has stated that this case should be treated as disposed of as per compromise being made for Rs. 100.00 lacs as full and final payment made by defendants/borrowers.*

*At the request of the Law Officer of the Respondent no. 1, this case stands disposed of accordingly.*

*Presiding Officer"*

20. It is important to note that the compromise was arrived between the Bank and the Principal Borrower

alone and there was no notice to the other defendants. The other defendants were not the parties to the said compromise.

21. The record further reveals that, the Principal Borrower failed to pay Rs. 100 lakhs towards full and final settlement of the compromise, the respondent No. 1 Bank filed an application before the Debt Recovery Tribunal to revive the case. The Debt Recovery Tribunal allowed the said application and revived the matter. The order sheet show that after revival of the case, no notice was served upon the petitioners herein.

22. The Bank on 12.02.2007 filed an application before the Debt Recovery Tribunal seeking a direction for payment of the compromised amount of Rs. 100 lakhs.

23. The Debt Recovery Tribunal vide its judgment on 30.09.2009 retreating the contents of the entire plaint allowed/decide the said Suit in favour of the Bank. In the judgment dated 30.09.2009 passed by the Debt Recovery Tribunal, the contentions of the Written statements were taken note of. It was noted that the

Respondent No. 3 had filed a Written statement, contending that the Suit was not maintainable. Respondent no. 3 further contended that the three sugar mills were acquired by the state Government through Ordinance No. 38 of 1985 followed by the Bihar Sugar Undertakings [Acquisition] Act, 1985. The Bank had already filed an application before the Prescribed Authority for determination of Compensation pursuant to scheduled undertaking and for payment of the dues of the bank form the compensation determined by the Prescribed Authority. The 2nd defendant in the Suit Sri Ashok Jain had also filed a Written statement taking the same plea as that of the 1st defendant, Principal Borrower. The petitioner no. 1 and respondent nos. 4 and 5 also filed these Written statements stating that the Suit was not maintainable against these defendants and that the defendants had never been the Board of Directors of the 1st Defendant -Principal Borrower. In the Written statement they have also raised the plea which was raised by the respondent No. 3. As stated supra, pursuant to demise of Sri Ashok Jain, his legal heirs respondent no. 2, 3 and 4 were brought on record as defendant Nos. 2(a) to 2(c). They had also filed a counter affidavit denying their liability and prayed to discharge the guarantee of liabilities executed by the Original Guarantor i.e. Late Ashok Jain in his personal capacity.

24. On perusal of the judgment dated 30.09.2009, it is evident that the issues were not properly framed by the Debt Recovery Tribunal. On going through the contents of the Written statements filed by Petitioners herein, Respondent No. 3 and Respondent nos. 4 and 5, the Debt Recovery Tribunal ought to have framed the issues with respect to the contentions raised by the defendants, especially with respect to the Ordinance No. 38 of 1885 passed by Bihar Government, wherein the assets of the Principal Borrower were taken over by the Government of Bihar.

25. On perusal of the Written statements, it is evident that the entire assets of the Principal Borrower had been taken over by the State Government, all the defendants took the same plea that the Suit itself was not maintainable and the only remedy available for the Bank, was to approach the Prescribed Authority for compensation. The

orders of Debt Recovery Tribunal, Patna dated 30th September 2009 disclose that no issue was framed as to the liability of the Government who took over the Sugar Mills. Further, the Bank has not impleaded the Government of Bihar, as necessary party to the Suit. No finding or discussion on the contentions raised by the defendants can be noticed. The application of the Bank/1st Respondent was allowed/decreed stating that the Bank was entitled to receive the loan amount from respondent nos. 4 and 5 and the petitioner No. 1 jointly and severally along with the interest for an amount of Rs. 1,81,08,014.19 with *pendente lite* and future interest @ 9% per annum from 20.12.1985 till the date of realization of the entire sum due and recoverable. Further, Petitioner nos. 2 to 4 were also held liable to pay to the extent of the properties of Sri Ashok Jain inherited by them.

26. Pursuant thereto recovery proceedings were initiated by the Bank. It has been contended by the petitioners that they learnt about the judgment dated 30.09.2009 of the Debt Recovery Tribunal only after coming across a notice dated 05.07.2012, published in The

Times of India, Kolkata, Edition dated 12.07.2012 by the Recovery Office of the Debt Recovery Tribunal in RP No. 210/2009.

27. On learning of Debt Recovery Tribunal, Patna's order dated 30.09.2009, the petitioners filed petition vide M.A. Nos. 432 of 2012, 433 of 2012 and 434 of 2012, praying to recall of the order dated 30.09.2009 but they were dismissed by the Debt Recovery Tribunal vide order dated 31.01.2013. The operative portion of the common order reads as follows:

> *"Ld. counsel for the parties are present. Heard the Id. Counsel.*
>
> *PT case no. 254 of 1998 was reserved for orders and judgment was pronounced on 30.9.2009, then this MA has been filed to recall the said order after more than 2 and half years. Various grounds have been taken as the matter has been settled through compromise between the company and bank and earlier, Written submissions/counter affidavit has already been filed by the applicant and nowhere it has stated that her father has not given any guarantee for extension of liability for the defendants no. 1 & 2. Even after compromise, the company did not pay*

*the amount in time. Hence, again revival petition has been filed by bank on failure of repayment of compromise amount and again order was passed and before passing the order, paper publication of notice has been made to appear the substituted defendants, but they did not object and once Written submissions/counter affidavit has been filed, then they cannot raise another point after filing of Written submissions/counter affidavit. So the matter has already been disposed off in 2009. If the applicant had any grievance, she has to raise the same in Written submission nor she has taken preliminary objection.*

*The applicant has further taken ground that no notice has been issued to her when the case was revived. If, the applicant could have filed any objection after paper publication at that point of time, it could be considered while disposing the original case, but a fresh point has been raise and the same has not been raised in Written submissions, which cannot be accepted at this stage. Since, the case had been compromised, and the company has deliberately and knowingly avoided the repayment of compromise amount, hence, no notice is required to be issued afresh as well as this is pending since 1985 and were watching Tribunal proceeding after disposal of case, then came forward taking new plea which* *would not be allowed to frustrate the Bank's claim which is custodian of public Money.*

*As per the agreement of loan, the liability of guarantor is co-extensive with the borrower and for obtaining loan, the borrower has to arrange the guarantor and on-failure, the guarantor is also liable to pay the dues of the bank with jointly and severally. Any compromise by company [borrower] is within the knowledge of guarantor.*

*Accordingly, the MA is dismissed. A copy of this order be given to the parties as well as to the Id. Recovery Officer."*

28. Aggrieved by the dismissal order passed in M.A. No. 432 of 2012, M.A. No.433 of 2012 and M.A. No.434 of 2012, the petitioner No. 1 preferred Writ petitions CWJC No. 6848 of 2013, petitioner no. 2 preferred CWJC No. 11665 of 2013 and petitioner nos. 3 and 4 preferred CWJC No. 9459 of 2013 before this Court. All the said Writ petitions were allowed by this Court vide common order dated 28.01.2014. The relevant extracts of the said order are under:-

*"I have considered the rival submissions of the the Learned counsels for the parties. I find force in the submission of the the*

*Learned counsel for the petitioners. The first question to be considered is as to whether the petitioners were entitled to a fresh notice upon the revival of the PT Case No. 254 of 1998 by the Debt Recovery Tribunal. In my view, there cannot be any two view in the matter that when the matter which had reached closure at the instance of certain parties and came to be revived at the instance of one of the parties to the compromise, then the other parties would be entitled to a fresh notice on the revival of such a matter. In the present case the petitioners were not even parties to the compromise petition and thus all the more it was essential that they should have been issued notice on the revival of the PT case by the Debt Recovery Tribunal on the basis of the application of the plaintiff-respondent Bank.*

*It is also evident from a perusal of the order-sheet that the Debt Recovery Tribunal itself thought it fit to issue notice to the parties on the revival of the PT case and recorded in the order dated 13.9.2004 that the notices have not been served on these petitioners. That being the situation, fresh notices ought to have been issued, which has not been done, which is evident from the perusal of the ordersheet.*

*So far as the recording of the*

*presence of the defendants in the order dated 28.2.2007 is concerned, it appears to be an obvious error as neither prior to that date nor subsequently any of the defendants have been shown to have appeared in the matter. In the face of specific plea of the petitioners in the M.A. Cases that they had not appeared at any point after the revival of the case and without there being any finding to the contrary on the point of their appearance on 28.2.2007 it has to be held that the petitioners had not appeared before the Debt Recovery Tribunal after revival of the matter before it.*

*In the aforesaid circumstances, it is evident that the judgment dated 30.9.2009 passed in PT Case No. 254 of 1998 has been passed in violation of the principles of natural justice which is not only a basic requirement of fair adjudication but specifically provided under Section 22(1) of the 1993 Act. The judgment dated 30.9.2009 thus cannot stand in so far as it concerns these petitioners. For the same reason, the orders dated 31.1.2013 also cannot be permitted to stand.*

*The judgment dated 30.9.2009 in so far as it concerns these petitioners as also the order dated 31.1.2013 are, accordingly, quashed. The petitioners are directed to appear before the*

*Presiding Officer, Debts Recovery Tribunal, Patna on 24th February, 2014 along with any fresh Written statement that they may choose to file on account of the subsequent developments and thereafter the Debt Recovery Tribunal shall proceed in the matter in accordance with law.*

*The Writ petitions are, accordingly, allowed with the above observations and directions."*

29. Pursuant to the order dated 28.01.2014 passed in CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013, the petitioners appeared before the Debts Recovery Tribunal, Patna on 24$^{th}$ February, 2014 along with their amended Written statements.

30. In the Written statements filed by the petitioners preliminary objections as to the maintainability of the Suit against them was raised. A specific plea was taken that the Suit was not maintainable in view of Section 131 of the Indian Contracts Act. Any guarantee executed by Late Shanti Prasad Jain or Late Ashok Jain respectively came to an end as their deaths. It was further contended that the petitioners had not inherited or possessed any of the

property/asset of Late Shanti Prasad Jain or of Late Ashok Jain. The petitioners had also relied upon the provisions of Bihar Sugar Undertakings (Acquisition) Act, 1985 contending that the Bank was entitled to claim all dues from the amount determined, under Section 7 of the said Act and not otherwise or from anybody else. It was stated that the Bank filed an Application before the Prescribed Authority under Section 7 of the Acquisition Act for claiming payment of the dues of the Bank from out of the compensation determined by the Prescribed Authority. The Bank's claim was registered as Claim Case No. 102 of 1990 before the Prescribed Authority. The Petitioners later learnt that the Bank's claim bearing Case No. 102 of 1990 was declined by the Prescribed Authority vide order dated 15.04.1999. Aggrieved by the order dated 15.04.1999, the Bank challenged the same before this Court vide Writ Petition No. 10661 of 1999, which was disposed of on 01.07.2004 setting aside the order dated 15.04.99 and remanded the matter to the Prescribed Authority for consideration in accordance with law and further the Bank was directed to appear before the Prescribed Authority. It was further contended in the Written statement that neither copy of the guarantee documents executed by Shanti Prasad Jain nor the original guarantee executed by Sri Ashok Jain were filed before the Debt Recovery Tribunal by the Bank. The petitioner nos. 2 to 4 in their Written statements had further contented that Late Ashok Jain alleged to have executed a guarantee on 29.05.1982. The loan documents on the basis of which the Suit had been filed was executed on 03.01.1983. Sri Ashok Jain was not a signatory to the loan documents executed on 03.01.1983 nor any continuation of guarantee on 03.01.1983 was executed by him. In light of the loan documents executed on 03.01.1983 to which the Sri Ashok Jain was not a signatory, his guarantee stood discharged. The petitioners also raised a plea with respect to the Suit being barred by limitation.

31. The record reveals that the Petitioners thereafter filed applications M.A No. 115/2014 (Petitioner no. 1), M A No. 110/2014 (Petitioner No. 2) and M A No. 109/2014 (Petitioner Nos. 3 and 4), requesting the Debt Recovery Tribunal to direct the Bank to file fresh evidence in the matter. The Petitioners in the said applications

reserved their rights to cross-examine the Respondent Bank's witness with respect to the fresh evidence being filed. The Petitioners further prayed for permission to cross examine the bank's witness whose affidavit by way of evidence had earlier been filed by the Bank, in the event the Tribunal was to permit the Bank to rely on the said evidence.

32. The Learned Debt Recovery Tribunal vide its order dated 02.04.2014, dismissed MA No. 109/2014, MA No. 110/2014 and MA No. 115/2014. The order of the Learned Debt Recovery Tribunal dated 02.04.2014 passed in the said applications reads as follows:

> *"On request of Id. counsel for MA-applicant, both the MAs have been called upon and taken up for hearing. Ld. Counsel for both sides are present. Heard the parties.*
>
> *2- The MA 109 of 2014 has been filed by defendant no. 2B and 2C to permit the MA-applicants to cross examination of bank's witness namely Sri Paras Nath Sinha as he has filed evidence on affidavit on behalf of bank in the year 2000. Another MA 110 of 2014 has been field by defendant no. 2A for the same request.*
>
> *3 As per the Hon'ble High Court*

*specific direction, the MA- applicants are to file fresh Written statement on account of the subsequent development's in this case. As per law, once, the MA- applicants have already filed their Written statement, they cannot file the same Written statement in subsequent time. Today, the MA- applicants have filed two MAs taking new pleas with the request to cross examination of the then Branch Manager who had filed evidence on affidavit in 2000. In the meantime, 14 years lapsed and at that point of time, his age was 51 years, it appears that he has retired from service. If, the applicants had any grievance, at that time, they had immediately filed an application for cross examination of the then Branch manager. The MA- applicants have approached the Hon'ble High Court and there, they have not prayed for cross examination of witness and they have been directed by the Hon'ble High Court to file fresh Written statement on account of the subsequent developments in the case. No new development has been made in this case.*

*<u>As per Section 19[24] of the RDDBFI Act, 1993</u>- The application made to the Tribunal under sub-section [1] or sub-section [2] shall be dealth with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty*

*days from the date of the application*

*4- The applicants' father have taken loan and given guarantee and enjoyed the public Money thereafter, compromise was made by the company but they did not deposit the amount. When the recovery certificate has been passed, then, they moved this Tribunal just to linger the case. This Tribunal has been constituted for speedy recovery of Public Money and the cases are to be disposed off within 6 months. The Original Suit was filed in the year 1985 against the sanction loan amount in the year 1969 and in the meantime, more than 29 years lapsed after filing the Suit and 45 years lapsed after sanction of loan amount and since then, the borrowers are enjoying the public Money, but no recovery has been made in this case. They are enjoying the public Money and by filing petition after petition, the recovery of public Money is being frustrated.*

*5. When company made compromise, they did not say that they are not liable to pay, if compromise is made by company, they may recover the same from company, but they remained silent years together and did not said so and after lapse of so many years, lingering the case by filing petitions* ***at belated stage which is not tenable In the eye of law****.*

*6- The Hon'ble High Court has not*

*given direction for de novo trial of the Suit and the prayer of the MA- applicants are not allowed, as the Hon'ble High Court has directed to file fresh Written statement in respect of MA- applicants on subsequent development only. No subsequent development has been made in this case as it is appeared from the case records and their intention is to linger the proceedings and keep public Money near about 5 decade.*

*7- Accordingly, both the MAs, which appear to be after thought, are liable to be dismissed and are hereby dismissed. A copy of this order be given to the parties. A copy of this order be placed in concerned PT Case No. 254/1998."*

33. The Writ petition initially was filed with the following prayers:-

*(a). permitting the parties to lead fresh evidence in PT No. 254/1998;*

*(b) directing the the the Learned Tribunal to grant an opportunity to cross examine Respondent Bank's witness;*

*(c) direct the the the Learned Tribunal to adjudicate the proceedings PT No. 254/1998 after taking into consideration the petitioner's contentions as have been raised in its amended Written statement;*

*(d) direct the the the Learned Tribunal not to take on record the copy of the alleged Bank Guarantee of Late S.P. Jain and Late Ashok Jain, unless the same are filed in accordance with law;*

*(e) pass an ad interim ex parte order staying the PT NO. 254/1998 against the petitioner, pending before the the the Learned Debt Recovery Tribunal, Patna and confirm the same after hearing the parties; and*

*(f) pass any other or such further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

34. At the stage of admission, after hearing the Learned counsel for the petitioners as well as the respondent Bank, this Court vide order dated 18.04.2014 has stayed all further proceedings in PT No. 254/1998 before the Debt Recovery Tribunal, Patna till further orders.

35. The Petitioners had, thereafter, filed I.A. No. 3598 of 2014 seeking permission to amend the Writ petition to raise additional grounds to challenge the order dated 02.04.2014.

36. A detailed counter affidavit was filed by the 1st respondent Bank, denying all the allegations made in the Writ petition.

37. The petitioners also filed I.A. No. 4 of 2024 to amend the prayers and seeking for a relief that this Court may be pleased to dismiss/quash PT No. 254 of 1998 pending before the Learned Debt Recovery Tribunal, Patna, against the petitioners. The petitioners in the said Interlocutory Applications have also sought permission to amend the Writ petition as earlier sought vide I.A. No. 3598 of 2014.

38. Subsequent to the filing of I.A. No. 4 of 2024, a supplementary counter affidavit was filed by the respondent Bank reiterating the contents of the initial Counter. It was further contended that the Writ is not maintainable as the petitioners have an alternate remedy in the form of appeal before the Debt Recovery Appellate Tribunal. It was stated that this Writ petition was filed to avoid pre-deposit of determined amount in terms of Section 21 of the RBD Act.

39. It is pertinent to mention that

supplementary counter affidavit disclose the objections as raised by the respondents on merits of the Writ petition but not on the basis of amendment application.

40. As noted supra the Writ petition was initially filed on the basis of the petitioners' knowledge, of the order dated 02.04.2014 when was dictated in open Court. The petitioners had sought liberty to amend the Writ petition if required. The petitioners had thereafter filed I.A. No. 3598 of 2014 seeking permission to amend the Writ petition to challenge the order dated 02.04.2014. Thereafter I.A. No. 4 of 2024 was filed seeking permission to amend the prayer and incorporate the amendments as were sought vide I.A. No. 3598 of 2014. In light of I.A. No. 4 of 2024 the petitioners have not pressed I A No. 3598 of 2014.

41. The amendment application I.A. No. 4 of 2024, only seeks to raise additional grounds as sought vide I.A. No. 3598 of 2014. The respondent Bank did not raise any serious objections to dismiss the interlocutory application thereafter the Court is inclined to allow the said application as no prejudice would be caused to the Bank.

42. Hence, I.A. No. 4 of 2024 is accordingly

allowed.

43. It is the contention of the Learned counsel for the Writ petitioners, that without considering the additional Written statement filed by the petitioners, the Tribunal passed the impugned order rejecting the additional Written statements of the petitioners though this Court granted liberty to file additional Written statement vide order dated 28.01.2014 in CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013. It is further contended by the Learned counsel for the Petitioners that the Debt Recovery Tribunal has expressed its doubts over the right of the Petitioners, to file an amended Written statement, without any basis has held that the Petitioners were not entitled to file an amended Written statement, as no subsequent developments took place. It is further contended that several facts and events pursuant to the filing of the earlier Written statements by the Petitioners transpired in the matter. Further, the questions regarding non filing of vital documents by the Bank, the proceedings which transpired before the Prescribed Authority, under the Bihar Sugar Undertakings (Acquisition), Act, the fact that

the Petitioners have not inherited and/or are not possessed of any belongings or assets of Late Shanti Prasad Jain and Late Sri Ashok Jain, and the judicial recognition of the same by Courts, the effect of the compromise between the Bank and the Company behind the back of the Petitioners, disposal of the PT Case No. 254 of 1998 by the Tribunal on the basis of the said compromise settlement, subsequent recall by the Learned Tribunal of its earlier order disposing of the PT Case No. 254 of 1998 in terms of the said compromise settlement, the scope of the provisions of the Bihar Sugar Undertakings Acquisition Act, 1985 and its interpretation by the Courts, Bank's application dated 12.02.2007 vide which an amount of Rs. One crore was only prayed for, were stated to be some of the subsequent developments, which were part of the additional/amended written statement.

44. It is further contended that the contentions raised by the petitioners were not considered by the Debts Recovery Tribunal and the Miscellaneous Applications are filed for cross-examination of Bank employers as the PT Case No. 254/98 was disposed off without hearing the

petitioners. Further contended that the amended Written statements filed by the Petitioners were not looked into. It is further submitted that the impugned order was passed with an intent to overreach or to frustrate the order dated 28.01.2014 passed by this Court and to deprive the Petitioners of the liberty to file an amended Written statement.

45. It is further contended by the Learned counsel for the petitioners that the Tribunal has permitted the Respondent Bank (Plaintiff before the Tribunal) to file additional documents after a lapse of a period of about 29 years from the date of commencement of the proceedings. The said documents had the effect of materially altering the nature of the proceedings, were permitted to be filed by the Bank without any formal application. The Learned Debts Recovery Tribunal has not provided opportunity to the petitioners to file their objections.

46. The Learned counsel for the petitioners have also contended that the Tribunal dismissed the applications of the Petitioners sought for directing the Respondent Bank to produce fresh evidence in the matter

and for grant of permission to cross examine the Respondent Bank's witness as several facts were concealed/mis-stated by the said witness. The denial of opportunity to cross examine a witness is gross violation of the Principle of Natural Justice. The petitioners further contended that they were deprived of an opportunity of free and fair trial.

47. The counsel for the petitioners further contended that the Tribunal erred in holding that "*father of the Petitioners had taken loan and given guarantee and enjoyed the public Money thereafter*". The said finding was wrong as no loan was availed by the Petitioners' father. A photocopy of Bank Guarantees executed by Late Shanti Prasad Jain and Late Ashok Jain were produced by the Respondent Bank for the first time in the course of hearing dated 02.04.2014 before the Debt Recovery Tribunal. The Debts Recovery Tribunal failed to appreciate that the Petitioners have a right to cross examine the Bank's witness. It is further contended that the Debt Recovery Tribunal's observation that the Petitioners moved to the Debt Recovery Tribunal after the recovery certificate was to linger the case,

is incorrect which contradict the order dated 28.01.2014 of the Court.

48. The Learned counsel for the petitioners further contended that the Suit /application PT Case No.254 of 1998 pending before the Debts Recovery Tribunal was not maintainable as it is barred by limitation.

49. Admittedly, Late Shanti Prasad Jain passed away in October 1977, i.e. much prior to the institution of the Suit/M.J. No. 452 of 1985 by the Bank, before the Sub-Judge, Patna which culminated in the proceedings before the Tribunal. The Bank relied on certain documents which were alleged to have been executed on 03.01.1983. As mentioned in the Plaint in paragraph 11, the documents are:- (i) Revival Letter (ii) Balance Confirmation Letter (iii) DP Note (iv) Letter of Continuity (v) Letter of Hypothecation General (vi) Hypothecation of goods (vii) Hypothecation of debts and movable assets and (viii) Letter of lien. All these documents were signed by one Shri D. Chatterjee, Financial Controller of the respondent no. 3 Company. There is no mention of any personal guarantee having been executed by Late Shanti Prasad Jain in the documents filed by the Bank.

As per the Bank (contents of para 17 of the Plaint) the cause of action arose on 03.01.1983, when, the Defendant No.1 Company, unconditionally acknowledged its liabilities for payment of dues of the bank executed various documents. It is a fact that Shanti Prasad Jain was not alive as on 03.01.1983, therefore the question of him having executed the said documents would not arise or of having consented to the change in the terms and conditions of the loan, or his legal heirs liability would not arise. At the time of demise of Late Shanti Prasad Jain, i.e. 27.10.1977, there was no default on the part of the Respondent no. 3 and his personal guarantee was alleged to have existed. After the death of Shanti Prasad the personal guarantee could not be renewed/revalidated by him. It is important to note that the Suit was filed by the Bank on 20.12.1985, against Late Shanti Prasad Jain's legal heirs, which was barred by Limitation.

50. It is further submitted by the petitioners' Counsel that death of a surety operates as revocation of any continuing guarantee. Reliance has been placed upon Section 131 of the Indian Contract Act, 1872, which reads

as follows:-

> ***"131. Revocation of continuing guarantee by surety's death -***
> *The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions."*

It is contended that on the death of Shanti Prasad Jain in October, 1977 his continuing guarantee, if any stands revoked.

51. The Learned counsel for petitioner Nos. 2 to 4 submitted that Sri Ashok Jain passed away on 03.02.1999 and that it is alleged in the Suit that Sri Ashok Jain had executed a Guarantee on 29.05.1982 in favour of the Bank. The loan documents were executed on 03.01.1983, vide which the terms of the loan were materially altered. No fresh guarantee was executed by Sri Ashok Jain on 03.01.1983. In light of the execution of fresh loan documents altering the terms of the loan on 03.01.1983, Sri Ashok Jain was discharged from his guarantee. The Learned counsel for the petitioners relied on Section 133 of the Indian Contract Act, 1872 which reads as follows:

> ***"133.Discharge of surety by variance in terms of contract.***—*Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance."*

52. The petitioners further contended that the Suit was filed on 20.12.1985, after a period of more than three years from the date of the guarantee which was executed by Ashok Jain on 29.05.1982. The said Suit was thus barred by limitation.

53. The petitioners further contended that they have neither inherited nor possessed any of the asset of Late Shanti Prasad Jain or Late Ashok Jain. The petitioners were made as parties in the Suit solely on the basis of being legal heirs of Late Shanti Prasad Jain or Late Ashok Jain, and they would be liable to the extent of assets of Late Shanti Prasad Jain or Late Ashok Jain which were inherited by them.

54. The petitioners relied on the order dated 23.03.1979 passed by the Hon'ble High Court of Delhi in

Probate Case No. 27(SC) of 1978 passed in Probate Case of Late Shanti Prasad Jain's will and on the Order dated 20.02.2002 passed by the Hon'ble High Court of Delhi in Probate Case No. 14 of 2000, with respect to Late Sri Ashok Jain's will.

55. It is further contended by the petitioners that the Government of Bihar through the Ordinance No. 38 of 1985 followed by The Bihar Sugar Undertakings (Acquisition) Act, 1985 (Bihar Act No. 12 of 1985) had acquired the Respondent No. 3's, Sugar Mills, namely, (i) S.K.G. Sugar Ltd., Hathwa, Gopalganj, (ii) S.K.G. Sugar Ltd., Siwan, and (iii) S.K.G. Sugar Ltd., Lauriya, West Champaran. In terms of the provisions of the Acquisition Act, 1985 the three Sugar Mills namely (i) S.K.G. Sugar Ltd., Hathwa, Gopalganj, (ii) S.K.G. Sugar Ltd., Siwan and (iii) S.K.G. Sugar Ltd., Lauriya, West Champaran vested in the State of Bihar from the said day. All properties as aforesaid were vested with the State Government/Corporation under Section 3 and Section 4(1) of the Acquisition Act, all such properties were freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it and any

attachment, injunction or decree or order of any Court or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties was further deemed to have been withdrawn. In terms of Section 7(1) of the Acquisition Act the State Government, by way of compensation for acquisition of the scheduled undertaking, was liable to pay the amount by which the book value of the assets of the undertaking exceeded its depreciation and was to be determined by the Prescribed Authority appointed by the Government. Sub-Section (2) of Section 7 of the Acquisition Act further provides that the liability of the scheduled undertaking in respect of the period prior to the appointed day shall be met, in accordance with the rights and interests or the conditions of the respective undertaking from the amount payable as compensation as determined under sub-Section (1) and shall be limited to the amount of compensation so determined. Further, the various type of dues of the schedule undertaking were classified into four categories and priorities were fixed for payment of such various categories. And in the event, the amount of compensation was proved to be insufficient, to meet the dues in any / all categories, then the said dues stands abated, leaving nothing at all to be paid to such Creditors.

56. It is further contended that the Bihar Sugar Undertakings (Acquisition) Act, 1985, came into force on 16.12.1985, i.e. prior to the filing of the instant Suit on 20.12.1985 by the Bank. In the light of the provisions of the said Acquisition Act, Respondent no. 3 was no longer liable to make payment of the amount as claimed in the proceedings by the Bank. The payments to the Bank to be made by the Prescribed Authority from the compensation amount which was to be determined by the Prescribed Authority. The Suit filed against the Petitioners and the other Respondents, was thus not maintainable at all.

57. The Respondent no. 3 had filed an application before the Prescribed Authority under Section 7 of the Acquisition Act for determination of compensation payable subsequent to the scheduled undertaking and for payment of the dues of Respondent No. 1/Bank from the compensation determined by the Prescribed Authority which was registered as Case No. 102 of 1990. The Bank's claim vide Case

No. 102 of 1990 was declined by the Prescribed Authority vide order dated 15.04.1999. Aggrieved by the said order dated 15.04.1999, the Bank challenged the same before this Court vide Writ Petition No. 10661 of 1999. This Court vide order dated 01.07.2004 set aside the order dated 15.04.1999 passed by the Prescribed Authority and remitted the matter the Prescribed Authority for consideration, in accordance with law and the Bank was directed to appear before the Prescribed Authority. The petitioners further submitted that they were not aware of the fact transpired thereafter and the bank should be called to inform the court about of the outcome of the proceedings before the Prescribed Authority.

58. Hence, the petitioners prayed to quash the impugned order and the proceeding in PT Case No. 254/1998.

59. A detailed counter affidavit was filed by the 1st respondent/Bank denying all the allegations made in the Writ petition. The contents of the counter affidavit disclose that the Writ petition itself is not maintainable as there is an efficacious alternate remedy available to the petitioners

before the Debt Recovery Appellate Tribunal. It is further stated that the petitioners failed to make out a valid case for interference by this Court in exercise of its extra ordinary Writ jurisdiction. The counter affidavit also disclose that initially notices were served on the defendants when the Suit was pending before the Civil Court and later the Suit was transferred to the Debt Recovery Tribunal and the case was renumbered as P.T.Case No. 254 of 1998. A compromise was also recorded between the parties before the Tribunal on 13.09.2002 by which the parties agreed to pay Rs. 100 lakhs in terms of the compromise subject to approval of BIFR. The Company failed to pay the amount of compromise for which the Bank filed an application on 26.11.2002 to recall the order dated 30.09.2002. At the request of the Bank, the Debt Recovery Tribunal recalled the order and subsequently passed order in P.T. Case and issued the Certificate against the defendants, for realization of the outstanding loan dues on 30.09.2009.

60. It is pertinent to note that though it has been contended by the respondent no. 1 that the parties agreed to pay an amount of Rs. 100 lakhs and the compromise was

recorded by the Debt Recovery Tribunal the record reveals that the parties to compromise were only the Bank and the defendant No. 1 / Principal Borrower and not the petitioners who were the legal heirs of Late Shanti Prasad Jain and Late Ashok Jain.

61. The respondent no. 1 in the counter affidavit has further stated that the petitioners had filed M.As for recalling the order dated 30.09.2009 and the Learned Tribunal had dismissed the said MAs vide order dated 31.01.2013. The Counter also states about the petitioners having filing Writ petitions CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013 and this Court was pleased to allow Writ petitions by common order dated 28.01.2014. It is specific contention in the Counter that the petitioners filed fresh a Written statement on account of the subsequent development, by taking a new plea and further a fresh application to permit them to cross-examine the then Branch Manager. The reliefs sought by the petitioners were beyond the direction of this Court, and therefore, there is no irregularity in the order of the Tribunal and it was justified and correct.

62. It is further contended that the original Suit was filed in the year 1985 against the sanction loan amount in the year 1969 and after expiry of more than 29 years from date of filing of the Suit, the petitioners were lingering the case and, therefore, the Debt Recovery Tribunal had rightly dismissed the Miscellaneous Applications filed by the petitioners.

63. Therefore, the Bank prayed to confirm order of the Debt Recovery Tribunal dated 02.04.2014 and to dismiss of the Writ petition.

64. Subsequent to the filing of I.A. No. 4 of 2024, a supplementary counter affidavit was filed by the respondent Bank, reiterating the contents of the initial Counter. It was contended that there is an alternative efficacious remedy available for the petitioners to prefer an appeal before the Debt Recovery Appellate Tribunal, Allahabad under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 and the Writ petition was filed only to avoid pre-deposit of determined amount under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993. Further, the petitioners cannot be permitted to enlarge and

widen the scope beyond the earlier order of this Court dated 28.01.2014 passed in CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013.

65. The Bank further contended that in the earlier Written statement filed by the original defendant No. 2 (Ashok Jain) he had only raised the pleas that in view of the Bihar Sugar Undertaking (Acquisition) Act, 1985, and that the creditor Bank cannot be allowed to claim its dues from defendant No. 2. The legal heirs of defendant No. 2 (petitioner Nos. 2 to 4) cannot go behind the stand of the original 2nd defendant. It has been further contended that the heirs of defendant No. 2 are only liable to the extent of the assets inherited by them from Late Sri Ashok Jain.

66. The Bank further contended that remedy under the Bihar Sugar Undertaking (Acquisition) Act, 1985, was an additional remedy available to the Bank against the borrower and the same does not take away the right to proceed simultaneously against the guarantor or their heirs whose liability is co-extensive with the borrower.

67. The Petitioners had filed a rejoinder affidavit, in response to the contentions which were raised

by the Bank in its supplementary Counter affidavit. It is contended that the Bank's objection with respect to the maintainability of the Writ petition on the ground of availability of an alternate remedy is incorrect. It was contented that the jurisdiction of this Court under Article 226 of the Constitution of India is plenary in nature and not limited by any other provisions of the Constitution. The availability of an alternate remedy is not a bar to prefer a Writ, is the event of violation of Principles of Natural Justice or where order or proceedings are without jurisdiction. The Petitioner further contended that the impugned order passed by the Learned Debt Recovery Tribunal was in violation of the Principle of Natural Justice and in contravention of the liberty that was granted by this Court vide order dated 28.01.2024 in earlier Writ petitions. The Petitioners further contended that Bank's contention that the instant Writ petition was filed, so as to avoid per-deposit amount in terms of section 21 of the Recovery of Debts and Banking Act is also incorrect, as no order/decree for payment of amount has been passed by the Debt Recovery Tribunal against the petitioners and hence the question of depositing the pre-deposit amount would not arise.

68. In order to support his contention, the Learned Counsel for the petitioners relied on ***Whirlpool Corporation* v. *Registrar of Trade Marks, Mumbai &Ors.*** reported in **(1998) 8 SCC 1** wherein their Lordships have held as under:-

> *“ **14.** The power to issue prerogative Writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing Writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.*
>
> ***15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its*

*jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.*

***16.****Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the* *significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ petition under Article 226 could still be entertained in exceptional circumstances.*

***17.*** *A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under:*

*"But this rule requiring the exhaustion of statutory remedies before the Writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a Writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."*

***18.*** *This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:*

*"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the the the Learned Solicitor General formulated to the normal rule as to the effect of the existence of*

*an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."*

***19.*** *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

*"Though the Writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority*

*acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."*

***20.*** *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

***21.*** *That being so, the High Court was not justified in dismissing the Writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".*

69. Further, the Learned counsel for the petitioners also relied on the judgment of ***M/s Comet Garments (P) Ltd. & Ors.*** **v.** ***Recovery Officer, Debt Recovery Tribunal & Ors*****. 2000 SCC OnLine Del 1125;** paragraphs 13 and 17 and also relied on the judgment of the Delhi High Court in ***Cochin International Airport Limited*** **v.** ***Presiding Officer, Debt Recovery Tribunal & Others.*** 2**010(114) DRJ 427 (DB)**

70. I have perused the documents and heard the contention of the parties.

71. On perusal of the common order dated 28.01.2014 passed in CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013, it is evident that that this Court had permitted the petitioners to appear before the Presiding Officer Debt Recovery Tribunal on 24.02.2014 **along with any fresh Written statement that they may choose to file on account of the subsequent developments and directed the Debt Recovery Tribunal to decide the matter in accordance with law**. On perusal of the impugned order, it is apparent that the Debt Recovery

Tribunal has not looked into the contents of the amended Written statements filed by the petitioners, but made as observations in the said order, rejecting to take the amended Written statements on record, expressing that no new case or subsequent developments had taken place.

72. The orders passed by the Debt Recovery Tribunal disclose that inspite of the directions of this Court, an observation has been made by the Debt Recovery Tribunal that no 'new development' or 'subsequent development' had taken place without examining the Written statement of the petitioners. On perusal of the Amended Written statements filed by the petitioners it can be noted that several subsequent developments were raised by the petitioners. The Tribunal did not examine the contents of the amended Written statement which were filed by the petitioners except expressing that 'no subsequent developments' or 'new developments' have been took place.

73. The impugned order passed by the Debt Recovery Tribunal is against the directions of this Court's order dated 28.01.2024 passed in CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013,

and against the Principle of Natural Justice. Therefore, objections of the Respondent, as to the maintainability of the instant Writ petition is rejected. In light of judgment in **Whirlpool Corporation** (Supra), the instant matter is a fit case for exercise of jurisdiction under Article 226 of the Constitution of India.

74. On perusal of the record, it is evident from the plaint itself, that Late Shanti Prasad Jain died in the month of October, 1977. The initial Written statement filed by the borrower clearly discloses about the Ordinance No. 38 of 1985 followed by the Bihar Sugar Undertakings (Acquisition) Act, 1985 (Bihar Act No. 12 of 1985), which was published in the Gazette on 16.12.1985. It was stated that in terms of the said Act, the State Government had acquired all the assets of the Principal Borrower i.e. the 3rd respondent herein. The initial judgment of the Debt Recovery Tribunal dated 30.09.2009 also does not contain any point for determination / issues on the aspect of the Ordinance No. 38/1985 or the assets having been taken over by the State of Bihar. Initial judgment of the Debt Recovery Tribunal dated 30.09.2009 is silent about the aspect of the

ordinance or the Bihar Sugar Undertakings (Acquisition) Act, 1985 and is also silent about the pleas taken in the Written statements filed by the petitioners, who are the legal heirs of Late Shanti Prasad Jain and the defendant No. 2 (Ashok Jain). Furthermore, a compromise was recorded between the principal borrower and the Bank and as the borrower did not pay the amount within the stipulated time the Bank had filed an application for recall of the order dated 30.09.2002 passed in PT Case No. 254 of 1998. Without service of notice upon the petitioners, the Presiding Officer, Debt Recovery Tribunal, had disposed of the case.

75. Being aggrieved by the orders of Debt Recovery Tribunal dated 30.9.2002 in PT Case No. 254 of 1998, the petitioners preferred CWJC No. 6848 of 2013, CWJC No. 11665 of 2013 and CWJC No. 9459 of 2013. As stated supra, the said Writ petitions were allowed by this Court and the Debt Recovery Tribunal’s order dated 30.09.2009 was set aside. The matter was remanded/remitted to the Debt Recovery Tribunal for fresh adjudication and liberty was granted to the petitioners, to file amended Written statements. Inspite of the order of

this Court, the amended Written statements filed by the petitioners were not considered by the Debt Recovery Tribunal. If at all the Written statements were taken on record the Learned Debt Recovery Tribunal would have framed issues to dissolve the litigation (lis) between the parties. Further for affording fair trial, the parties would be called for leading of evidence. The Debt Recovery Tribunal did not frame any issues. Further M.A. No. 109 of 2014 and M.A. No. 110 of 2014 filed by petitioners, to seek direction to the Bank to produce fresh evidence and to cross examine the Bank witnesses i.e. the then Branch Manager of the Bank were dismissed. It is important to note that Bank preferred a Writ vide CWJC No. 10661 of 1999 as - the prescribed authority/ as per the Ordinance No. 38/1085 rejected the claim of the Bank and this Court disposed of the said Writ petition with an observation "*that under Section 7 of the Act, persons mentioned in the Second schedule can only claim before the prescribed authority and while paying compensation the amount due to person of such category has to be deducted. In my opinion, the Legislature in its wisdom thought that while granting* *compensation to the owners of the Undertaking, the liability of the undertaking to specified category of persons shall be met from amount of compensation, so that persons coming within those categories may not have to take recourse to other remedy. This is a remedy provided under special law and hence I am of the considered opinion that the prescribed authority misdirected itself in holding that no decision is required as the matter is pending before the Debt Recovery Tribunal. Hence, the impugned cannot be allowed to stand*."

76. Instead of framing issues and directing the Bank to file fresh evidence, the Debt Recovery Tribunal erroneously dismissed application MA No. 109/2014 and MA No. 110/2014. It can be observed from the records, that the Bank for the first time, after 29 years sought to place on record a copy of the Bank Guarantee stated alleged to have been executed by Late Shanti Prasad Jain. It is the specific contention for the Learned counsel for the petitioners that no application seeking permission for filing the said documents was filed by the Bank. The Debt Recovery Tribunal despite of the oral objections raised by the

Petitioners received the said documents from the Bank.

77. This Court is of the considerable view that the order of the Debt Recovery Tribunal is contrary to the law. The Respondent Bank if desirous, of filing a new document after 29 years should have been directed to do so, by filing an application seeking permission to file such additional document and an opportunity to reply to such an application should have been given to the petitioners. It is only after hearing both parties any decision on such an application should have been taken. In the absence of an opportunity to respond/object being granted to the petitioners, the said documents should not have been taken on record.

78. In response to the Petitioners contention regarding non-maintainability of the proceedings, before the Debt Recovery Tribunal in light of the provisions of the Bihar Sugar Undertaking (Acquisition) Act, 1985 the Bank has stated that the provisions of the Act are in addition to the legal remedy available for it to recover its dues. However, on perusal of the provisions of the said Act, it can be noted that as per the terms of Section 3 of the said Act, the three Sugar Mills stood transferred to the State of

Bihar on the appointed day i.e. 16.12.1985 and was free from all encumbrances together with all assets. Further, in terms of Section 4(1) of the Bihar Sugar Undertakings (Acquisition) Act, 1985, all properties of respondent no. 3 are vested with the State Government / Corporation and under Section 3, of such vesting, the Principal Borrower was freed and discharged from any trust, obligation, mortgage, charge lien and all other encumbrances. The Bank was entitled to claim all dues from the amounts determined under Section 7 of the Bihar Sugar Undertakings (Acquisition) Act, 1985, and not otherwise or from anybody else. The Bank's claim was registered as Claim Case No. 102 of 1990 before the Prescribed Authority, however, the same was rejevcted by the Prescribed Authority vide their order dated 15.04.1999.

79. Admittedly, CWJC No. 10661 of 1999 was preferred by the Bank against the rejection of its claim by the Prescribed Authority. This Court vide its order dated 01.07.2004 has set aside the order dated 15.04.99 passed by the Prescribed Authority and remitted the matter Prescribed Authority for consideration in accordance with law and the

Bank was directed to appear before the Prescribed Authority. The order of the Court reads as follows:

*"under Section 7 of the Act, persons mentioned in the Second schedule can layy its claim before the prescribed authority and while paying compensation the amount due to persons of such category have to be deducted. In my opinion the Legislature in its wisdom thought that while granting compensation compensation to the owners of the Undertaking the liability of the undertaking to specified category of persons shall be met from amount of compensation so that persons coming within those categories may not have to take recourse to other remedy. This is a remedy provided under special law and hence I am of the considered opinion that the prescribed authority misdirected itself in holding that no decision is required as the matter is pending before the Debt Recovery Tribunal. Hence, the impugned cannot be allowed to stand. Petitioner shall appear before the prescribed authority within two months from today. As the matter is old, the prescribed authority shall make endeavour to dispose of the matter within three months*

*from the date of appearance of the petitioner.*

*In the result, the application is allowed. Impugned order dated15.04.199 (Annexure-1) is set aside and the matter is remitted back to prescribed authority for consideration."*

80. During the course of the hearing, the Learned Senior Counsel for the Respondent No. 3 submitted that pursuant to the order dated 01.07.2004 passed in CWJC No. 10661 of 1999, the Bank approached the Prescribed Authority and after hearing the parties and on perusal of the relevant material, the Prescribed Authority disposed of the matter vide order 05.10.2005 determining Rs. 5,48,14,146/- as payable amount, after deducting any amount already paid by the State Government through the Bihar State Sugar Corporation Limited.

81. Thereafter the Bank filed CWJC No. 4382 of 2009 for direction to the respondent authorities for payment of proportion share of compensation payable by the State Government for acquisition of respondent No. 3 by virtue of Bihar Sugar Undertakings (Acquisition) Act, 1985 with interest. This Court after considering the

arguments of both the parties had concluded that the Prescribed Authority was vested with sufficient powers for execution of its order, in terms of Section 9 of the Act and the Writ petition was disposed of vide order dated 02.08.2018 giving liberty to the petitioner/Bank to approach Prescribed Authority for execution of the Authority's order dated 05.10.2005. It is submitted by the Learned Senior Counsel for the Bank that pursuant to the order dated 02.08.2018, the Bank has approached the Prescribed Authority, but its petition was dismissed by the Prescribed Authority stating it to be "time barred". Being aggrievedby the order of Prescribed Authority, the Bank filed CWJC No. 5303 of 2023 which is pending.

82. Admittedly, the Prescribed Authority has determined an amount of Rs.5,48,14,146/- payable as compensation, after deducting any amount already paid by the State Government. The Bank on one hand is litigating with the State Government for receiving its claim amount, as determined by the prescribed authority in terms of Section 7 of the Bihar Sugar Undertakings (Acquisition) Act, 1985 and on the other hand, it has also filed a civil

Suit for recovery of amount. The Prescribed Authority in its order dated 15.04.1999 erred in holding, that no decision was required as the matter was pending before the Debt Recovery Tribunal and the said order was set aside by this Court vide order dated 01.07.2004 and the Bank was directed to approach the Prescribed Authority for adjudication of its claim. Pursuant thereto, the Prescribed Authority vide its order dated 05.01.2005 determined Rs.5,48,14,146/- payable as compensation, after deducting any amount already paid by the State Government in terms of the Bihar Sugar Undertaking (Acquisition) Act, 1985. In terms of the provisions of the said Act, remedy of the Bank lies in recovering its loan amount from the amount of compensation as determined by the Prescribed Authority, under the provisions of the Act and not in the proceedings before the Debt Recovery Tribunal from the Petitioners. The PT Case No. 254/1998 was filed by the Bank on 20.12.1985 after the enactment of Bihar Sugar Undertakings (Acquisition) Act, 1985 on 16.12.1985. In my considered view, the said proceedings before the Debt Recovery Tribunal are not maintainable and are liable to be quashed.

83. Initially, first and foremost contention of the Bank was that Late Shanti Prasad Jain was the guarantor to the loan, availed by the Principal Borrower in the year 1969. Even after the death of Shanti Prasad Jain, he remained liable as a continuing guarantor. On the other hand it is the specific contention of the legal heirs of Late Shanti Prasad Jain i.e. (1st petitioner), the daughter of Late Shanti Prasad Jain that her father died in the month of October, 1977 and, therefore, the guarantee ended in the Month of October, 1977 as such she is not liable to pay the dues for the guarantee stood by his Late father Shanti Prasad Jain. Admittedly, Section 131 of the Indian Contract Act states that "The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions". On the death of Shanti Prasad Jain in the month of October, 1977 the contracts came to an end and, therefore, the legal heirs of Late Shanti Prasad Jain cannot be held liable for the repayment of dues by the Principal Borrower in view of the guarantee given by Shanti Prasad Jain.

84. The second fold of argument of the

respondent Bank is that Ashok Jain stood as guarantor on 29.05.1982 and, therefore, as on the date of filing of the Suit, Ashok Jain was alive and, therefore, in the case of death of Ashok Jain, his legal heirs are liable to pay the dues.

85. It is pertinent to note that the Suit was filed on 20.12.1985 for the fresh loan for which Ashok Jain stood as guarantee is dated 29.05.1982. But fresh loan documents were executed on 03.01.1983 and Ashok Jain did not stood as guarantor for the loan documents dated 03.01.1983. It is an admitted fact that Ashok Jain died on 03.02.1999 and his legal heirs were brought on record as 2(A) to 2(C) i.e. Indu Jain/wife of Ashok Jain, Vineet Jain and Sameer Jain who are sons of Ashok Jain. The entire record disclose that loan documents were executed by the Principal Borrower on 03.01.1983, but there is no averments made in the plaint or in the arguments that Ashok Jain has executed fresh guarantee for the loan dated 03.01.1983. The limitation period for recovery of any amount is three years. Assuming for a moment that Ashok Jain stood as guarantor and executed the documents on

29.05.1982, the Suit was to be filed on 29.05.1985 that is before three years from the date of execution. It is alleged in the suit that the loan documents were executed by Principal Borrower on 03.08.1982. However, there is no document filed by the Bank to show that on 03.01.1983 Ashok Jain has executed guarantee for the loan availed by Principal Borrower. Therefore, this Court is of the considered view that the Suit filed as far as the execution of the documents by Ashok Jain was concerned, was initiated subsequent to the period of three years and was barred by limitation and, accordingly, the Suit is not maintainable against the either of legal heirs of Shanti Prasad Jain or of the legal heirs of Ashok Jain. The remedy available to Bank is to recover the amount from the Principal Borrower and not from the legal heirs of the guarantor in any manner.

86. The petitioners approached this Court as no opportunity was given to them by the Debt Recovery Tribunal for cross examination of witness and Principles of Natural Justice was violated. This Court is of the considered view that the proceedings in PT Case No. 254

of 1998 is not maintainable against the petitioners, who are the legal heirs of Late Shanti Prasad Jain and Late Ashok Jain.

87. The Writ petition is hereby allowed and PT Case No. 254 of 1998 is hereby quashed against the petitioners.

88. The impugned order dated 02.04.2014 passed by the Tribunal in PT Case No. 254 of 1998 is also hereby set aside and quashed.

89. Interlocutory Application(s), if any, shall stand disposed of.

90. In result, the Writ petition is allowed.

**(G. Anupama Chakravarthy, J)**

Spd/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 26.11.2024 |
| **Transmission Date** | |