IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23183 of 2013

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1. M/s Ubica Industries through its Proprietor namely Sri Raj Kumar situated at behind Mona Cinema, Opposite Ghandhi Maidan, P.S.- Pirbahore Town & Distt.- Patna.
2. Pawan Kumar, S/o Late Sri Laxman Sah Resident of Mohalla- Bakarganj Daldali Road, P.S- Kadamkuan, Distt- Patna, At Present Bakarganj, Behand Mona Cinema, P.S.- Pirbahore, Distt.- Patna.
3. Murari Shankar, S/o Late Sri Laxman Sah Resident of Mohalla- Bakarganj Daldali Road, P.S- Kadamkuan, Distt- Patna, At Present Bakarganj, Behand Mona Cinema, P.S.- Pirbahore, Distt.- Patna.
4. Sri Raj Kumar, S/o Late Sri Laxman Sah Resident of Mohalla- Bakarganj Daldali Road, P.S- Kadamkuan, Distt- Patna, At Present Bakarganj, Behand Mona Cinema, P.S.- Pirbahore, Distt.- Patna.

... ... Petitioner/s

Versus

1. State Bank of India, Ashok Rajpath Branch having its head office at Ashok Rajpath, P.S.- Pirbahore, P.O.- GPO, District- Patna, Bihar- 800004.
2. The Branch Manager, State Bank of India, Ashok Rajpath Branch, Ashok Rajpath, P.S.- Pirbahore, P.O.- GPO, District- Patna, Bihar- 800004.
3. The Authorized Loan Officer, State Bank of India, Ashok Rajpath Branch, Ashok Rajpath, P.S.- Pirbahore, P.O.- GPO, District- Patna, Bihar- 800004.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Ashutosh Nath Alok Chandra, Gauri Shankar, Roushan Kumar, Risup & Amritanshu Dangi, Advocates
For the Respondent/s	:	Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 09-07-2024

Initially, the writ petition is filed by the petitioners with a prayer to quash the Demand notice dated 02.08.2013 (Annexure-2) issued by the authorized officer of the State Bank of

Bikaner and Jaipur, Ashok Rajpath Branch, Patna wherein the petitioner was directed to repay the outstanding dues to the Bank for a sum of Rs. 2,68,890/- with interest as on 01.04.2013 within 30 days from the date of issuance of notice.

2. Further prayer sought is that for quashing of the Possession notice dated 07.10.2013 (Annexure-3) which was published in Hindustan Times daily Newspaper dated 11.10.2013 for which the aforesaid Demand notice was issued.

3. The brief averments of the petitioners are that the petitioner i.e. Ubica Industries was established by the petitioner No. 4 as proprietor. It is a joint family property wherein the elder brother of the petitioners namely, Binod Kumar approached the respondent Bank for financial accommodation for cash credit of Rs. 1,30,000/- with an undertaking for timely re-payment of the loan amount. The respondent Bank had sanctioned cash credit loan to the limit of Rs. 1,30,000/- with an interest of 14% per annum.

4. It is specifically mentioned in the petition that Ubica Industries, closed the sanctioned loan account in the year 1994. Later, there were no transaction between the Bank and the petitioner company. Further, the respondent Bank filed Money Suit No. 150 of 1993 before Sub-Judge VI, Patna which was dismissed as withdrawn on 29.04.2011 (Annexure-1).

5. It is the specific contention of the Learned counsel for the petitioners that the demand notice dated 02.08.2013 issued by the signature of the authorized officer of the Bank directing them to repay Rs. 2,68,890/- with interest within sixty days and also Possession notice dated 07.09.2013 published in Hindustan Times daily newspaper dated 10.10.2013 are illegal and arbitrary. However, petitioner No. 2 and petitioner No. 4 immediately opened the Joint Saving Account and deposited Rs. 3,00,000/- against the total outstanding dues amount for Ubica Industries as well as Pyasa Industries for which the petitioner No. 2 was the proprietor and he addressed a letter dated 19.10.2013 to the Branch Manager of the Bank with the request for one time settlement (Annexure-4).

6. It is also contended that the petitioners have addressed a letter to the Branch Manager dated 26.10.2013 to furnish the details of the outstanding dues and settlement of account (Annexure-5).

7. It is urged by the Learned counsel for the petitioners that inspite of the settlement made outside the Court, the Demand notice was issued by the respondent Bank under the SARFAESI Act, which is illegal, arbitrary and violative of these fundamental

rights, therefore, prayed to quash the Demand notice dated 02.08.2013 and Possession notice dated 07.10.2013.

8. A detailed counter affidavit was filed by the respondent Bank admitting about the cash credit loan of Rs. 1,30,000/- issued by the Bank. The counter affidavit further disclose that petitioner executed various agreements with the Bank and also executed guarantee agreement by mortgaging the property, which include land and building. Further the petitioner has not operated successfully his loan account, as a result he was declared NPA on 07.03.2006. The State Bank of Bikaner and Jaipur was merged with State Bank of India with effect from 01.04.2017. Further, the respondent Bank exercised power under SARFAESI Act and initiated proceedings for recovery of outstanding dues of Rs. 2,68,890/- and therefore, there is no irregularity vide Possession notice dated 07.10.2013 or of the Demand notice dated 02.08.2013. It is further contended by the Learned counsel for the respondent Bank that after taking possession of the property, notice was published in two daily newspapers i.e., Hindustan and Hindustan Times dated 11.10.2013. Further, regarding the deposit Rs. 3,00,000/-. The Learned counsel for the respondent contended that the amounts are deposited by the applicants in their own saving accounts and Rs. 2,17,000/- only

was credited in the cash credit loan Account No. 61004689820 on 29.01.2016 by transfer from Saving Bank Account No. 61205100102 as per the request of applicants namely, Pawan Kumar and Raj Kumar and the rest of the loan Accounts was still unpaid till date and the outstanding amount of the cash credit loan is Rs. 7,66,839/- including the interest amount @ 10% of Rs. 4,97,949/- up to 30.01.2024 (Annexures R/1 and R/2). Further, Learned counsel for the respondent contended that respondent Bank initiated proceedings against the petitioner under the SARFAESI Act, 2002 and therefore, the writ petition is to be dismissed as it is devoid of merits.

9. It is pertinent to mention that it is reflected in the counter affidavit that the State Bank of Bikaner and Jaipur was merged with the State Bank of India. Later, I.A. No. 01 of 2024 was filed which was allowed by this Court and accordingly, the Office has substituted the respondents 1, 2 and 3 as respondents (in place of State Bank of Bikaner and Jaipur as State Bank of India and officials of the Bank). Further, supplementary counter affidavit has been filed on behalf of the respondents reiterating the facts mentioned in the initial counter affidavit. In the supplementary counter affidavit for the first time the respondents mentioned about the withdrawal of Money Recovery Suit before the Sub-Judge 6th

Patna i.e. Money Suit No. 150/1993. The supplementary counter affidavit, clearly disclose that the Bank has not stated or mentioned in the affidavit about the part of the amount or entire amount received by the Bank from the borrowers or Guarantors and that the Bank has not issued No Dues Certificate regarding the loan account. It is contended by the Learned counsel for respondents that in view of the judgments of the Apex Court, the writ petition is not at all maintainable against the SARFAESI Act and there is an alternative statutory remedy available under the DRT Act and therefore, prayed to dismiss the writ petition.

10. Heard the arguments for the petitioners as well as for the respondents.

11. On perusal of Annexure-1, it is evident that a petition has been preferred before the Sub-Judge 6th Patna by the State Bank of Bikaner and Jaipur for withdrawal of the Money Suit. The contents of the order clearly disclose that the Suit was filed for realization of loan amount and the matter has come up for final arguments. At that stage, respondent Bank filed petition for withdrawal of Suit on 27.04.2011. An affidavit of the Bank officials was accompanied with the petition. The contents of the order disclose that the matter was settled between the plaintiff and defendants outside the court and therefore, the plaintiff prayed to

dismiss the Suit as withdrawn. The trial Court (Sub Judge VI, Patna) has recorded the contents of the petition and the Money Suit was dismissed as withdrawn on 29.04.2011 with a finding that dispute was settled outside the Court. The Demand notice was dated 02.08.2013 and the Possession notice was dated 07.10.2013, which clearly reveals that that they were issued by the Bank after lapse of two years and six months of the withdrawal of the Money Suit.

12. On perusal of the counter affidavit of the respondent Bank dated 01.02.2024, it is evident that the counter affidavit is very much silent about the Money Recovery Suit filed by the Bank or about the dismissal of the Suit as withdrawn. Admittedly, the supplementary counter affidavit which was filed on 09.05.2024 reveal about the mention of the Money Recovery Suit No. 150/1993 filed before the Sub-Judge 6th Patna. But the contentions made in the said counter affidavit disclose that the amount for compromise was not mentioned in the petition or in the order before the Court, and as such, it cannot be construed as the settlement arrived between the parties.

13. It is pertinent to mention that the respondent Bank has itself filed the petition before the Court for withdrawal of the Suit at the stage of final arguments. Further, the Suit was

dismissed as withdrawn, and no leave or liberty was granted to pursue the matter further at a subsequent stage. Admittedly, for the same set of facts, the proceedings under SARFAESI Act has been initiated against the petitioner. During the course of argument, it was brought to the notice of this Court that the petitioners have made an application before the General Manager, State Bank of India, Patna under Right to Information Act, 2005 seeking information, as on whose request the amount of Joint Saving Account has been transferred to the account of Ubica Industries and further sought for the xerox of the request letter or photo-copy of the documents. The said application was made by the petitioner on 28.05.2024 after the supplementary counter affidavit was filed. Petitioner received a reply from the respondent Bank which reads as follows:-

"*Ashok Rajpath Branch made extensive search and investigation to obtain the relevant records and missing documents but the missing documents are not available in the branch as the records are beyond the retention limit period. Hence the requested information is not available*."

14. On perusal of the said document, it is evident that the respondent Bank Branch do not have the relevant records of the petitioners to answer the query of the petitioners. At this

juncture, Learned counsel for the respondent contended that the State Bank of Bikaner and Jaipur was merged with the State Bank of India in the year, 2017. The records were missing. Admittedly, it is the contention of the petitioners that the loan account was closed in the year, 1994 and in spite of it a Money Recovery Suit which has been instituted before the Sub-Judge 6th Patna vide Money Suit No. 150/1993. Further, the petitioners have compromised with the Bank and the matter was settled outside the Court and the respondent Bank has itself filed a petition under Order XXIII of the CPC for withdrawal of the Suit. Accordingly, the Trial Court has dismissed the Suit as withdrawn recording the compromise which was arrived between the parties outside the Court on 29.04.2011. For the same set of loan or the facts, the SARFAESI proceedings have been initiated against the petitioner. Therefore, this Court is of the considerable view that after recording the compromise between the parties SARFAESI proceeding cannot be initiated against the petitioner.

15. It is relevant to mention that the customers of the Bank cannot be tortured or harassed for an act, for which the Bank settled the loan account. Though there is an alternative remedy available for the petitioners, after the lapse of 12 years of filing

the writ petition it is not proper to dismiss the petition on technical ground for a settlement already arrived by the parties.

16. In view of the above discussion, the writ petition is hereby allowed setting aside the Demand notice dated 02.08.2013 as well as Possession notice dated 07.10.2013.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	12.07.2024
Transmission Date	NA