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16.05.2024.
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

CO 74 of 2024

**Roma Roy
-versus
Indian Overseas Bank, Siliguri Branch**

Mr. Subham Ghosh
Mr. Mayank Roy

... for the petitioner.

Mr. Prasanta Joardar
Ms. Khusbu Agarwal
Ms. Esha Acharya

... for the Opposite party/Bank.

The petitioner is the defendant in an original application being O.A. no. 131 of 2016 filed by the opposite party/bank before the Debts Recovery Tribunal-II, Kolkata which is now pending before the Debts Recovery Tribunal at Siliguri on being renumbered as T.O.A. 565 of 2017. In the said original application, the bank has claimed a certificate for Rs. 99,12,775/- along with further interest against the defendant. The petitioner has alleged that the defendant approached the bank for a term loan of Rs. 99,79,000/- for purchase of 4 numbers of AMW Tripper Trucks Model-2518 along with its list of equipments of ASIA Motor Woks Limited (AMWL). The said term loan was sanctioned on certain terms and conditions. The petitioner herein being the defendant in the original application has defaulted in repaying the loan amount,

as a consequence whereof, the certificate has been prayed.

It is the case of the petitioner in the written statement filed in the original application that she never applied for or availed a term loan to the limit of Rs.99,79,000/- for purchasing the equipments-in-question.

The petitioner has also alleged that fraud has been perpetrated on her. It is also the case of the petitioner that she has lodged a police complaint with the Bagdogra Police Station against Sri Sumit Kumar Das and S.C. Nayak. It is also the case of the petitioner that S.C. Nayak was the then Manager of the opposite party/bank at its Siliguri Branch. Connivance of S.C. Nayak with Sumit Kumar Das for perpetrating fraud on the petitioner has also been alleged. The suit has travelled to the argument stage. The petitioner says that the opposite party, being the applicant in the original application, has filed an evidence on affidavit through the present Manager of the Siliguri Branch. The Tribunal has not allowed cross-examination of the deponent. The petitioner says that examination of S.C. Nayak, the then Branch Manager of the opposite party bank, is of utmost importance. The petitioner had applied before the Tribunal praying for leave of the learned Tribunal for issuance of summons to Sri S.C.

Nayak or in his absence summons be issued on the Chief Manager of the Opposite/party bank to be present before the Tribunal for cross-examination.

The learned Advocate appearing on behalf of the opposite party bank seeks an adjournment to take necessary instructions from her client. However, considering such prayer in the light of the prayers made in the application, I do not find any cogent reason to adjourn the matter for instruction from the bank. The point involved is not a factual one but a legal one for which factual instruction from the bank is not necessary. The application is, therefor, taken up for consideration.

The petitioner can obviously ask for cross-examining the deponent through whom the evidence on affidavit has been filed, even though the Debts Recovery Tribunal (Procedure Rules, 1993) may not have clearly provided for such cross-examination because denial of the same will be in violation of the principles of natural justice. In the absence of cross-examination, the evidence of the deponent in-chief cannot also be accepted in view of the principles analogous to those laid down under the Indian Evidence Act, 1872 being the law of the land.

The petitioner however, cannot compel anyone who has not deposed to be present for being cross-

examined. If the petitioner has to bring him to the witness box, he can do so by issuing summons, which is like issuance of subpoena. In that case, the witness so summoned, will be the witness of the party, who calls him/her to the box.

The Tribunal, while passing the impugned order, has missed out a vital portion of the prayer made by the petitioner in her application for issuance of summons. In the prayer portion, it is prayed for that summons be issued to Sri S.C. Nayak or in his absence upon the present the Chief Manager of the said branch. The Tribunal was right in refusing issuance of summons to S.C. Nayak for being cross-examined because he has not filed the evidence but erred in disallowing the present Chief Manager for being cross-examined.

The order impugned dated 5th April, 2023 is set aside to the extent it refuses the prayer to allow cross-examination of the deponent through whom, evidence on affidavit was tendered.

The Tribunal is therefor, directed to fix a date for cross-examination of the deponent through whom the evidence on affidavit has been tendered by the opposite party/bank.

Nothing further remains to be adjudication in this application. The application is accordingly allowed to the extent as aforesaid.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Arindam Mukherjee, J.)