IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14864 of 2019

M/s Kripashree A partnership firm having it's place of business at Opposite Hathwa Market, Bari Path, Patna through one of it's partner namely Rohan Agrawal male aged about 31 years son of Shri Pawan Kumar Agrawal resident of Agrawal House, East Boring Canal Road, P.S. Budha Colony Patna- 800001.

... ... Petitioner/s

Versus

1. The State Bank of India through the Chairman-cum- Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madame Cama Road, Mumbai- 400021.
2. The Chief General Manager State Bank of India, Local Head Office, Patna.
3. The General Manager (NW-1) SME-BU-1, Department State Bank of India, 6th Floor, Local Head Office, West Gandhi Maidan, Patna.
4. The Assistant General Manager State Bank of India, Zonal Office, Patna.
5. The Chief Manager State Bank of India, SME Branch, Dak Bunglow Road, Patna- 800001.

... ... Respondent/s

Appearance :
For the Petitioner/s : M/s Gautam Kumar Kejriwal
Alok Kumar Jha
Mukund Kumar
Akasa Kumar
For the Respondent/s : M/s Mukund Ji
Shyamal Krishna Sinha

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 16-10-2025

1 The petitioner has filed the instant application for the following reliefs:

> *"(a) For issuance of a writ in the nature of certiorari for quashing of the letter bearing reference number SME BU/19-20/04 dated 04.04.2019 issued by the respondent General Manager, SME BU1 department at the*

local head office of the respondent state Bank of India at Patna;

(b) For issuance of a writ or order or direction in the nature of mandamus upon the respondents for refund of a sum of 27,89,724/- at the earliest or within the timeframe as may be directed by this Hon'ble Court;

(c) For issuance of a writ or order or direction upon the respondents to pay adequate interest upon the aforesaid sum of 27,89,724/- with effect from 30.06.2018 till the date of payment to the petitioner on account of loss suffered due to the said sum been illegally and unreasonably debited from the E-DFS account held with the respondent bank;

(d) For holding and a declaration that the impugned act of recovery of the aforesaid sum by way of interest by the respondent bank on account of notional liability mounted in the account due to error on part of the respondent bank or the operating software at the bank is against the principle of reasonableness, fairness and transparency in banking business and related relationships and as such

violative of Article 14 of the Constitution of India;

(e) For that the respondent bank and its authorities may not be permitted to penalize the petitioner and its partners for the wrong committed by them or default of the operative software in light of the principle of law involved in famous maxims "commodum ex injuria sua nemo habere debet" and "nullus commodum capere potest de injuria sua propria" which prescribes that no one can draw advantage of his own wrong;

(f) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

2. At the outset, the Learned counsel for the respondents raised a preliminary objection regarding the maintainability of the present writ petition against the respondent–State Bank of India.

3. Heard the Learned counsel for both parties on the issue of maintainability.

4. In support of the maintainability of

the writ petition, the Learned counsel for the petitioner placed reliance on the decision of the Hon’ble Supreme Court in **ABL International Ltd. and Another vs. Export Credit Guarantee Corporation of India Ltd. & Ors.**, reported in **(2004) 3 SCC 553**.

5. I find substance in the submissions advanced on behalf of the petitioner. I have perused the judgment relied upon and considered the principles laid down therein.

6. The Hon’ble Supreme Court in **ABL International Ltd. (supra)** held as follows:

> “**26.** Therefore, this objection must also fail because in a given case it is open to the writ court to give such monetary relief also.
>
> **27**.From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:
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> (*a*) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(*b*) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
(*c*) A writ petition involving a consequential relief of monetary claim is also maintainable."

7. In light of the aforesaid judgment and considering the facts and circumstances of the present case, this Court is of the considered view that the writ petition is maintainable.

8. The matter shall now proceed for hearing on merits.

9. The brief facts as culled out from the Writ petition are that the petitioner is a partnership firm engaged in the franchise business of Tanishq, having its retail outlet in Patna. In the regular course of its business, which involves substantial investments in jewellery, the petitioner had availed financial assistance from Standard Chartered Bank, M.G. Road, Bangalore through an E-DFS account with an initial limit of Rs.5 crore

which was later enhanced to Rs.8 crore. The transactions with the said bank were regular and dispute-free. In February 2016, officials of the respondent, State Bank of India (hereinafter called as SBI), approached the petitioner with a proposal to shift its banking relationship with SBI, assuring smooth, regulars and satisfactory services without any requirement of personal handling of the accounts. Trusting these representations, the petitioner agreed, and opened an E-DFS account (Account No. 35605845148) at the respondent's SME Branch, Patna, with a sanctioned limit of Rs.10 crore, as per sanction letter dated 10.02.2016.

10. It is contended in the Writ petition that on 01.03.2016, SBI remitted a sum of Rs. 1.45 crore by debiting the new DFS account to settle the petitioner's outstanding dues with Standard Chartered Bank. The said amount was credited to the petitioner's E-DFS account in Standard Chartered Bank, which in turn issued a No Dues Certificate. However, the debit made by SBI on 01.03.2016 in the E-DFS account of the petitioner

was irregular and improper exercise as per standard bank practices, as the E-DFS account is meant solely for disbursal to suppliers. On 04.03.2016, SBI crediting back the said amount in the E-DFS account of the petitioner as a corrective measure and simultaneously debiting a newly opened Cash Credit (CC) account (Account No. 35615613591) with the same sum of Rs.1.45 crore. The petitioner, on learning of this correction, raised no objection and liquidated the CC account by depositing the entire principal amount by 28.03.2016 and also paid interest amounting to Rs.75,469 by 02.04.2016. Since 05.04.2016, there were no further transactions in the CC account, confirming that the account was opened solely for rectification.

11. On 27.06.2018, the petitioner was unexpectedly informed by Tech Mahindra through an email that a debit transaction for Rs.1.45 crore made on 01.03.2016 in the E-DFS account was not picked up by the SCFU system and accordingly interest could not be charged on the said amount

so debited to the extent of Rs.27,89,724.62. Subsequently, on 30.06.2018, the respondent bank debited Rs.28,47,305.14 from the petitioner's E-DFS account to recover the differential interest in most unreasonable, arbitrary and unfair manner without prior notice or opportunity of hearing to the petitioner.

12. The petitioner objected to this recovery both orally and in writing through letter dated 17.07.2018, and approached the Banking Ombudsman and the respondent bank's higher authorities. However, despite acknowledging the system error in its response dated 29.01.2019 to the Ombudsman, the bank refused to refund the recovered amount. Accordingly, the Banking Ombudsman dropped the proceedings on jurisdictional grounds and communicated the same via e-mail dated 15.02.2019 to the petitioner. The respondent, in its official reply dated 04.04.2019 vide Letter No. SME-BU/19-20/04, reiterated that the interest was correctly recovered due to missed debit entry, relying on internal

system limitations in E-DFS operations.

13. The Learned counsel for the petitioner submitted that it is the admitted position of the respondent bank that the manual debit entry of Rs.1.45 crore made on 01.03.2016 in the E-DFS account was not picked up by the SCFU system, and this error was solely attributable to the bank’s internal accounting and software mechanisms.

14. It is further submitted that the respondent bank, upon identifying the procedural defect opened a CC account on 04.03.2016, debited it with Rs.1.45 crore, and credited the same amount to the E-DFS account to rectify the error. The petitioner fully repaid the Rs.1.45 crore along with applicable interest of Rs.75,469 by 02.04.2016. Therefore, there was no loss of interest to the bank in real terms.

15. It is further submitted that the impugned recovery of Rs.28,47,305.14 in 2018, was calculated as differential interest on the basis of a system-missed entry, which is arbitrary, and

without legal justification, especially when the actual liability was already discharged by the petitioner within the prescribed time period.

16. The recovery was made without issuing any formal demand notice, show cause notice, or providing any opportunity to the petitioner to contest the claim. This is in gross violation of the principles of natural justice. It is further submitted that the actions of the respondent in unilaterally debiting the petitioner's account, despite its own error, are arbitrary, unreasonable, and violative of Article 14 and Article 19(1)(g) of the Constitution of India. Furthermore, the unauthorized debit amounts to deprivation of property without authority of law, infringing the constitutional legal right under Article 300A of the Constitution.

17. It is argued that as per the bank's own admission, the petitioner had already paid the sum of Rs.1.45 crore along with interest by April 2016. The manual debit which was not picked up by the system was a technical error that could

have been rectified through internal adjustments, without imposing any liability on the petitioner.

17. The Learned counsel for the petitioner submitted that the petitioner, having suffered financial loss due to the arbitrary recovery, is entitled to a refund of Rs.28,47,305.14/- along with interest from the date of recovery till the date of payment.

18. In support of the case of the petitioner, the Learned counsel has relied on the following judgments of the Hon'ble Supreme Court reported in 1. **(Karam Kapahi & Ors. Vs.Lal Chand Public Charitable Trust & Anr. [(2010) 4 SCC 752],** 2. **(Eureka Forbes Limited Vs. Allahabad Bank & Ors) [(2010) 6 SCC 193]** and 3. **Lloyd Electric & Engineering Limited Vs. State of Himachal Pradesh & Ors[(2016) 1 SCC 560]**.

19. The observations made by the Hon'ble Supreme Court in **Karam Kapahi (supra)** are quoted hereinbelow:

"50. The phrase "approbate

and reprobate" is borrowed from Scots law where it is used to express the common law principles of election, namely, that no party can accept and reject the same instrument.

51. In the instant case while filing its suit and questioning the title of the Trust, the Club seeks to reject the lease deed. At the same time while seeking the equitable remedy under Section 114 of the Transfer of Property Act, the Club is relying on the same instrument of lease. Legally this is not permissible. (See the observation of Scrutton, L.J. in *Verschures Creameries Ltd.* v. *Hull and Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608 : 1921 All ER Rep 215 (CA)] , which has been approved by a Constitution Bench of this Court in *Bhau Ram* v. *Baij Nath Singh* [AIR 1961 SC 1327] .)

52. The principle of election has been very felicitously expressed in the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947. The learned author has explained the principle thus:

"The doctrine of election may be thus stated: That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.......

53. In the old equity case of *Streatfield* v. *Streatfield* [Wh & TLC, 9th Edn., Vol. I, 1928] this principle has been discussed in words which are so apt and elegant that I better quote them:

"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention, express or implied, of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both [Story, 3rd Edn., p. 452; *Dillon* v. *Parker*, (1818) 1 Swans 359 : 36 ER 422; *Thellusson* v.

Woodford, (1806) 13 Ves 209 : 33 ER 273.] . The principle is stated thus in *Jarman on Wills* [6th Edn., p. 532; and *Farwell on Powers*, 3rd Edn., p. 429.] :'That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it' [See *Walpole* v. *Conway (Lord)*, 1740 Barn C 153 : 27 ER 593; *Kirkham* v. *Smith*, (1749) 1 Ves Sen 258 : 27 ER 1018; *Macnamara* v. *Jones*, 1 Bro CC 481 : 28 ER 1251; *Blake* v. *Bunbury*, (1792) 4 Bro CC 21 : 29 ER 758; *Wintour* v. *Clifton*, 8 De GM & G 641 : 44 ER 537; *Codrington* v. *Codrington*, (1876) LR 7 HL 854 at p. 861; *Pitman* v. *Crum Ewing*, 1911 AC 217 at pp. 228, 233 (HL); *Brown* v. *Gregson*, 1920 AC 860 at p. 868 : 1920 All ER Rep 730 (HL).] . The principle of the doctrine of election is now well settled."

54. This principle has also been explained by this Court in *Nagubai Ammal* v. *B. Shama Rao* [AIR 1956 SC 593] . Speaking for a three-Judge Bench of this Court, Venkatarama Ayyar, J. stated in the Report : (AIR p.

602, para 23)

"*23*. ... The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election...

55. On the doctrine of election the learned Judge in *Nagubai Ammal case* [AIR 1956 SC 593] has also referred to *Halsbury's Laws of England* (Vol. XIII, p. 464, Para 512) in which this principle of "approbate and reprobate" has been described as a species of estoppel which seems to be "intermediate between estoppel by record and estoppel *in pais*" (p. 602, para 21 of the Report

20. The observations made by the

Hon’ble Supreme Court in **Eureka Forbes Limited (supra)** are quoted hereinbelow:

> **65.** Another aspect of this case which required to be considered by this Court is, what was intended to be suppressed by the legislature by enacting the Recovery Act, 1993 and thereafter, by amending various provisions, including Section 2(*g*) in the year 2000. Obviously, the mischief which was intended to be controlled and/or prevention of wastage of securities provided to the Bank, was the main consideration for such enactment. The purpose was also to prevent wrongdoers from taking advantage of their wrong/mistakes, whether permissible in law or otherwise. These preventive measures are required to be applied with care and purposefully in accordance with law to ensure that the mischief, if not entirely extinguished, is curbed.”
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> **66.** The maxim *nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take

advantage of his wrong or manipulations. In the present case Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant. The Bench of this Court in *Ashok Kapil* v. *Sana Ullah* [(1996) 6 SCC 342] referred to rule of mischief and while explaining the word "building", held as under: (SCC p. 346, para 11)

"11. Stroud's Judicial Dictionary (Vol. I of the 5th Edn.) states that 'what is a building must always be a question of degree and circumstances'. Quoting from *Victoria City Corpn.* v. *Bishop of Vancouver Island* [(1921) 2 AC 384 (PC)] (AC at p. 390), the celebrated lexicographer commented that 'the ordinary and natural meaning of the word "building" includes the fabric and the ground on which it stands'. In *Black's Law Dictionary* (5th Edn.) the meaning of 'building' is given as 'A structure or

edifice enclosing a space within its walls, and usually, *but not necessarily*, covered with a roof'. (emphasis in original). The said description is a recognition of the fact that roof is not a necessary and indispensable adjunct for a building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such general meaning in the present context would help to prevent a mischief."

21. The observations made by the Hon'ble Supreme Court in **Lloyd Electric & Engineering Limited (supra)** are quoted hereinbelow:

"**14.** The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-5-2009, accordingly, having been issued by the Department concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy. Once the Council of Ministers has taken a decision to extend the 2004 Industrial Policy and extend tax concession beyond 31-3-2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification.

15. It has to be noted that the Finance Department of the State Government had concurred with the proposal of the Department of Industries to extend the tax concession beyond 31-3-2009 till 31-3-2013 and the Council of Ministers had accordingly taken a decision also. No doubt, the statutory notification issued by the Excise and Taxation Department under Section 8(5)(*b*) of the Act on 18-6-2009 has stated that the eligible

> units will be entitled to the concession with immediate effect. Merely because such an expression has been used, it cannot be held that the State Government can levy the tax against its own policy. The State Government is bound by the policy decision taken by the Council of Ministers and duly notified by the Department concerned viz. Department of Industries.”

22. The Learned counsel appearing on behalf of the respondent–State Bank of India submits that the present writ application is devoid of merit, and requires no interference by this Hon’ble Court. It is contended that no legal or fundamental right of the petitioner has been violated, nor has any injury been caused.

23. It is further submitted that the writ petition suffers from non-joinder of necessary party, as the Transferor Secured Creditor, i.e., Standard Chartered Bank, is a necessary party to the dispute but has not been impleaded in the present proceedings.

24. The Learned counsel for respondents submits that during the process of taking over the petitioner's existing e-DFS facility of Rs.10 crores from Standard Chartered Bank, a bona fide error occurred on 01.03.2016, when a sum of Rs.1.45 crores was mistakenly disbursed by debiting the petitioner's e-DFS account instead of a separate cash credit account. This error was subsequently rectified by the respondent bank on 04.03.2016 by opening a fresh Cash Credit account.

25. It is contended that interest represents public money, and the bank, being a custodian of such funds, cannot allow any error to persist. The amount of Rs.28,47,305.14 was recovered as interest legitimately incurred on account of the missed debit entry that remained undetected due to a system error. The correction made by the bank was in line with basic accounting principles.

26. The Learned counsel for respondents further submitted that the

petitioner's grievance was already raised before the Banking Ombudsman, who declined to entertain the same due to lack of jurisdiction. The bank, through its letter dated 04.04.2019 (Annexure 17/A), only sought to clarify the petitioner's confusion and made an amicable request to resolve the issue, without any element of arbitrariness or illegality.

27. It is further argued that the dispute raised is merely a matter of rendition of accounts, arising out of misunderstanding on the part of the petitioner. The writ petition, is an attempt to avoid payment of legitimately accrued interest, and no relief under Article 226 of the Constitution of India is warranted in such commercial and accounting matters.

28. Heard the Learned counsel for the petitioner as well as the respondents.

29. Upon careful consideration of the records and the rival submissions of the parties, this Court is of the considered view that the recovery of Rs.28,47,305.14 from the petitioner's

account is arbitrary, unjustified, and legally unsustainable. It is not disputed that the manual debit of Rs.1.45 crore on 01.03.2016 was not picked up by the bank’s SCFU system due to a technical failure. The said mistake was entirely on the part of the respondent bank and its service provider. The petitioner had no role in the said omission. The bank, upon identifying the issue, tried to rectified it on 04.03.2016 by opening a CC account and crediting back the E-DFS account. The petitioner acted, in good faith and without demur, repaid the principal amount of Rs.1.45 crore along with interest by 2016. It is evident from the email dated 29.01.2019 that the bank admitted this procedural lapse and its internal cause. However, despite this admission, the bank sought to recover notional interest for a period during which the actual liability was fully discharged. The said recovery, effected unilaterally to the petitioner and without issuance of any demand notice or opportunity of hearing recovery was made which is a clear violation of principles of natural justice.

30. The bank’s act amounts to penalizing the petitioner for its own systemic failure, which is impermissible in law. No individual or entity can be allowed to take advantage of its own wrong. This principle has been affirmed by the Hon’ble Supreme Court in ***Eureka Forbes Ltd. (supra)***, and ***Karam Kapahi (supra)***. The respondent bank, being a public sector entity, is expected to act in a fair, transparent, and accountable manner. The unilateral recovery, in this case, falls foul of the constitutional mandate amounting to deprivation of property without authority of law. Further the citations referred by the counsel for the petitioner squarely applies to the phrase “approbate and reported reprobate i.e. the actions of the respondent Bank.”

31. In view of the foregoing discussions, this Court finds no error attributable to the petitioner. The systemic failure of the respondent bank or its software systems cannot become a ground for imposing any financial burden on the petitioner, particularly after full and

timely discharge of the loan obligation.

32. Accordingly, the prayer made in Paragraph No. 1 of the writ petition is allowed.

33. The respondent bank is directed to refund the amount of Rs.27,89,724/- (Rupees Twenty Seven Lakh Eighty Nine Thousand Seven Hundred Twenty-Four only) to the petitioner along with simple interest at the rate of 6% per annum from 30.06.2018, the date of debit, till the date of actual payment within a period of two months from the date of receipt / production of a copy of this order.

34. With the above observations and directions, the writ petition is allowed.

35. Interlocutory Application, if any, shall stands disposed of.

Spd/- **(G. Anupama Chakravarthy, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2025
Transmission Date	