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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/303/2025
WITH WPO/1793/2023
KUSUM TRADING COMPANY AND ANR.
VS
CHIEF MANAGER, BANK OF BARODA AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date: 5th May, 2026.

Appearance:
Mr. Shilon Sengupta, Adv.
Mr. Saurov Mallick, Adv.
Mr. Aniket Nanda, Adv.
…for the appellants
Mr. Dipanjan Datta, Adv.
Ms. Papiya Dutta, Adv.
Mr. Subhajit Chowdhury, Adv.
Ms. Esha Basak, Adv.
…for Bank of Baroda

The Court: The factual assertions which the learned advocate for the appellant seeks to make, are not supported by any document. It is not possible for us to come to the conclusion that the prayers in the writ petition being WPO 1793 of 2023 should have been allowed.

It is submitted by the learned advocate for the appellant that the Writ Court ought to have gone into this aspect and considered whether the bank should refund excess debit under the heads of interest, penal interest, penal charges, processing fees and inspection charges. Such refund should be compoundable monthly at the rate of 18% per annum. Further prayer for a writ of mandamus upon the bank, to treat the loan as an advance and return all charges debited including the charge of interest ought to have been allowed. Moreover, the respondent bank ought to have been directed to return the three fixed deposits and restrained from debiting any further amount as interest as also other charges, on the basis of demand notice.

Another writ petition being no. WPO 1790 of 2023 was filed, challenging the demand notice and the proceeding initiated by the bank against the appellant under the provisions of Section 13(2) of the SARFAESI Act. Both these writ petitions were disposed of by a common order.

It is submitted by Mr. Sengupta that, even if Her Lordship was of the view that the matter had reached its finality when the Debts Recovery Tribunal had passed an order of recovery, Her Lordship could not have disposed of WPO 1793 of 2023, in which the prayers were different. The subject matter of challenge in the said writ petition was also distinct and separate.

It is further contended that the proceeding initiated by the Bank, before the Debts Recovery Tribunal continued exparte. The order was passed exparte, without considering the case of the appellant. Thus, the issue raised in WPO 1793 of 2023 ought to have been decided. The summons were not served and the appellant was unrepresented before the Tribunal.

Mr. Datta, learned advocate for the bank submits that, the proper course of action of the appellant was to file a counter-claim before the Debts Recovery Tribunal and pray for the reliefs which were sought for in WPO 1793 of 2023. Moreover, once the Debts Recovery Tribunal had directed recovery of the money, upon quantifying the same, the appellant had no other alternative, but to prefer an appeal. The order of the Debts Recovery Tribunal, subsumed any other demand that the appellant may have had. The demand was adjudicated fully and finally. Moreover, recovery proceeding was initiated and recovery notice was also issued.

We find from the order impugned that, both the writ petitions arise out of the self-same loan which was extended by the bank, to the appellant. The challenge in WPO 1790 of 2023, was with regard to the SARFAESI proceeding and the second writ petition being WPO 1793 of 2023 was filed with prayers in the nature of mandamus directing the bank to refund monies which had been charged on account of interest, penal interest, processing charges, inspection charges etc. Prayer was made for refund of those along with compounded interest.

In our view, the disposal of both the writ petitions by the order impugned, is not illegal. Final decision with regard to the amount due and payable by the appellant to the bank, was taken by the Debts Recovery Tribunal. The demand of interest or charges etc., including the penal interest that may have been imposed upon the appellant by the bank were subsumed in the order of the Tribunal. The adjudication had reached its finality. Recovery proceeding was also initiated. Recovery certificate had been issued. Thus, the remedy of the appellant was before the learned Debts Recovery Appellate Tribunal by filing an appeal. No such appeal was filed. The appellant has allegedly filed a recalling application before the Debts Recovery Tribunal for recalling of the exparte order. The Tribunal will consider the same in accordance with law. The order impugned is not interfered with at this stage.

The appeal is accordingly disposed of.

(SHAMPA SARKAR, J.)

(AJAY KUMAR GUPTA, J.)

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