IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19502 of 2016

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Sri Praveen Anand S/o Late Balram Anand C - 71, 7th Floor, Krishna Apartment, Boring Road, P.S. Srikrishna Puri, Patna.

... ... Petitioner

Versus

1. The Asst. General Manager, State Bank Of India, Stressed Assets Recovery Branch, (SARB), Patna at 2nd Floor, SBI Patna Main Branch Building, West Gandhi Maidan, Patna.
2. Union of India through Presiding Officer, Debt Recovery Tribunal, Wings 'A' and 'B', 5th Floor, Karpuri Thakur Sadan, GPOA, near Rajeev Nagar, P.S. Ashiana Digha Road, Patna - 800025.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr.Arbind Kumar Jha, Advocate
For the Respondent/s : Mr.Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 25-11-2019

This writ application has been preferred challenging the initiation of the proceeding under Section 19(25) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the "Act of 1993") read with Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as the 'Rules of 1993'), by the Respondent – Bank against the petitioner.

2. Petitioner has also challenged the order dated 19.10.2016 passed by Respondent No. 2 – Bank and has prayed for declaring the impugned order as null and void.

3. The Facts in brief are as under:-

(i) The Respondent – Bank filed an Original Application bearing No. 24 of 2008 before the Debts Recovery Tribunal, Patna (hereinafter referred to as the "Tribunal or DRT") for realization of a sum of Rs. 34,01,934.21 with interest and cost. It is stated that during pendency of the Original Application, the petitioner entered into a compromise before the Special Lok Adalat organized by the Tribunal, in the said Lok Adalat the petitioner agreed to pay Rs. 27 Lakhs against outstanding dues on compromise. In terms of the compromise, copy of which is enclosed as Annexure '1' to the writ application, the entire payment was to be made by the end of September without interest and if amount remains unpaid the same shall be liable to be paid latest by 17.01.2011. Admittedly, the petitioner failed to comply with the terms and conditions of the order dated 17.01.2010. Thereafter the learned Tribunal disposed off Original Application No. 24 of 2008 on 29.03.2011 and a certificate for recovery of Rs. 34,01,934.21 together with pendente lite and future interest at contractual rate from 01.02.2008 till full and final realization of actual payments was issued in favour of the

Bank (Annexure – 2 to the writ application).

(ii) For execution of the certificate of recovery a recovery proceeding being R.P. Case No. 40 of 2011 has been registered before the learned Recovery Officer, Debts Recovery Tribunal, Patna. It is stated that during the pendency of the recovery proceeding, the petitioner filed a Miscellaneous Application No. 79/2012 challenging the recovery proceeding itself showing that the certificate cannot be executed and in terms of the award of Special Lok Adalat, the petitioner can at most recover Rs. 27 Lakhs. This contention of the petitioner was rejected vide order dated 25.04.2012, but a fresh direction was issued in the Miscellaneous Application saying that the petitioner would pay 40% of the settlement amount of Rs. 27 Lakhs within 15 days and the rest shall be paid within three months in equal monthly instalment with simple Prime Lending Rate (PLR) interest. Copy of the order dated 25.04.2012 passed in M.A. No. 79/2012 is annexed as Annexure ‘3’ to the writ application.

(iii) Admittedly once again the petitioner failed to comply with the order dated 25.04.2012 and upon failure of

the petitioner the Recovery Officer proceeded with the recovery proceeding and auction sale of the mortgaged property was also notified. The proprietor once again filed a Miscellaneous Application before the Tribunal with a cheque of Rs. 8 Lakhs and prayed for further time to pay the amount in installments. The learned Tribunal, once again passed the order dated 19.07.2012, by which the auction was deferred and a last chance was given to the applicant M/s Samay Vatika through it's Proprietor, to clear the balance amount with simple 9% interest from the date of default. Two months time was granted to make payment of the amount in installment and further liberty was granted that on failure of the petitioner to pay the rest amount, he must pay 80% amount within time and another 20% amount within another one month positively. The proprietor applicant was directed to pay Rs. 20,000/- as legal expenses and also cost of paper publication.

Since the proprietor failed to pay the balance amount, once again a Miscellaneous Application being M.A. No. 378 of 2013 was filed and this time the DRT/Tribunal passed the order

dated 04.04.2014 (Annexure '5' to the writ application). This time by referring to the settlement entered in the Lok Adalat at Rs. 27 Lakhs on 17.01.2010, the Tribunal directed the petitioner to pay rest of the amount within three months in equal monthly instalments with a further stipulation in the order that "**Even then, the applicant face any problem in paying the rest amount, then he will file MA for reducing of compromise amount."**

4. The order dated 04.04.2014 (Annexure '5' to the writ application) was challenged by the respondent – Bank before the Debts Recovery Appellate Tribunal. It was registered as SR No. 135/2014. The petitioner claims that he complied with the order dated 04.04.2014. The facts, as stated in the writ application, reveal that an application dated 17.12.2014 was filed by the Bank showing an outstanding amount of Rs. 96,134/- together with cost and interest, the application is said to have been filed in the recovery proceeding and thereafter a joint application was filed stating inter alia as under : -

"On mutual discussion and mediation both the parties have agreed for settlement of claim on payment of Rs. 20,000/- and the said amount is paid today through a cheque bearing No. 036589 dated 27.12.2014."

5. Based on the said joint application, the Presiding Officer, Debts Recovery Tribunal, Patna passed order dated 17.12.2014 (Annexure '7' to the writ application) in which it has been recorded that *"After receiving the amount in full and final settlement of the dues of the bank, the bank shall move a proper application for the withdrawal of the case in connection with this account... ..."* The Recovery Proceeding was thus kept in abeyance.

6. It is the grievance of the petitioner that after the aforesaid order was passed, the petitioner approached the respondent – Bank to withdraw the pending case and release the mortgage documents and in this connection submitted several representations. When the petitioner ultimately filed an application before the Ombudsmen, Reserve Bank of India, giving rise to M.A. No. 51/2015, the same was dismissed as the matter was sub-judice before the Debts Recovery Tribunal.

7. It further appears that S.R. No. 135/2014 preferred by respondent – Bank against the order dated 04.04.2014 passed by the Tribunal was dismissed on a preliminary objection that the application was not maintainable since it was not filed as regular appeal under Section 20 of the Act of 1993. Since the appeal was preferred under Rule 22 of the Rules of 1994 and it did not mention section 20 of the Act of 1993, the Debts Recovery Appellate Tribunal (in short the 'DRAT') rejected the appeal on this ground alone. It is the further admitted position that after dismissal of appeal S.R. No. 135/2014, the Bank has filed an appeal S.R. No. 121/2018 in which notices have been issued to the petitioner and the petitioner has already entered appearance, therefore the order dated 04.04.2014 passed by the Debts Recovery Tribunal, Patna is still sub-judice.

Challenge to the order dated 19.10.2016 passed in M.A. No. 51/2015

8. It appears that against the order dated 17.12.2014 passed in Mega Lok Adalat of the Tribunal, the respondent no. 1 – Bank preferred a Miscellaneous Appeal

being M.A. No. 51/2015 with a prayer to recall the order dated 17.12.2014. The contention of the respondent – Bank was that the total outstanding in the account of the petitioner was Rs. 52,07,624/- as on 30.11.2014, but the then AGM Sri V.P. Tiwari is said to have settled the matter on Rs. 96,134/- because of a mishearing from the staffs of the Bank. It was submitted on behalf of the Bank that the order dated 17.12.2014 has no basis and in fact it is based on a total misrepresentation of the facts, therefore the order dated 17.12.2014 is to be declared void *ab initio*. It is also submitted that in terms of order dated 17.12.2014 no Award was prepared in accordance with Regulation 17 of the National Legal Services Authority (Lok Adalats) Regulations, 2009. In this connection, the respondent – Bank relied upon the judgments of the Hon'ble Supreme Court in the case of **Sri Tarsem Singh Vs. Sri Sukhminder Singh** reported in **AIR 1998 SC 1400, Indian Bank Vs. Blue Jaggers Estates Limited and others** reported in **(2010) 8 SCC 129** and the judgment of the Hon'ble Allahabad High Court in the case of **Dr. (Smt.) Shashi Prateek Vs. Charan Singh Verma & another reported in**

AIR 2009 ALL 109.

9. The contention of the respondent – Bank was opposed by and on behalf of the petitioner on the ground that the settlement dated 17.12.2014 is a deemed decree, therefore it cannot be challenged before the Tribunal and in case the Bank wanted to challenge the same, it had only option to move before a higher forum.

10. Learned Tribunal has allowed the application preferred by the respondent – Bank and directed the Recovery Officer to proceed with the recovery certificate and recover the amount accordingly.

Submissions of the petitioner

11. It is the contention of Mr. Arvind Kumar Jha, learned counsel for the petitioner that pursuant to the order dated 04.04.2014, the petitioner has paid a sum of Rs. 26,99,700/- i.e. a little less than Rs. 27 Lakhs and these amounts were paid by 14.07.2014. It is his contention that the respondent – Bank having accepted the compromise on 17.12.2014 was not justified in filing of M.A. No. 51/2015 and in any case the Presiding Officer, Debts Recovery Tribunal, Patna had no jurisdiction to interfere with the

award of the Lok Adalat. In this connection, he relied upon the judgments of the Hon'ble Supreme Court in the case of **P.T. Thomas Vs. Thomas Job** reported in **(2005) 4 SCC 46** and the judgment of the Hon'ble Apex Court in the case of **State of Punjab Vs. Jalour Singh** reported in **(2008) 2 SCC 660**.

Submission on behalf of the Bank

12. The respondent – Bank has submitted that the writ application preferred by the petitioner is not fit to be entertained in view of there being an adequate alternative remedy of appeal available to the petitioner against the impugned order. It is submitted that from the narration of facts itself this court may appreciate as to how and to what extent the then learned Presiding Officer of the Debts Recovery Tribunal has exceeded his jurisdiction and authority in law to interfere with the certificate of recovery by repeatedly entertaining the Miscellaneous Applications and every time passing a fresh order contrary to the certificate of recovery issued in favour of the Bank. It is submitted that once the initial compromise dated 17.01.2010 failed and thereafter the learned Tribunal had

issued a certificate of recovery under Section 19 of the Act of 1993 which remained unchallenged at the instance of the petitioner, there was no reason for the then Presiding Officer to entertain three successive miscellaneous applications in which he passed orders one after another going beyond his jurisdiction and authority in law. Referring to Hon'ble Division Bench Judgment of this court in the case of Mr. Rajeev Kumar Singh & Ors. Vs. Chairman cum Managing Director, Indian Bank & Ors. reported in 2017(3) BLJ PHC 268, learned counsel submits that on 04.04.2014 the then learned Presiding Officer once again passed an order wholly without jurisdiction against which the bank preferred Appeal S.R. No. 135/2014. In the application the Bank mentioned the relevant provision as Section 22 of the Debts Recovery Tribunal (Procedures) Rules, 1994 but by taking a totally hyper technical and unwanted as also wholly illegal approach, the learned Appellate Tribunal dismissed the Appeal only because it did not mention Section 20 of the Act of 1993. It is submitted that it has been repeatedly held by Hon'ble Apex Court that a petition should not be rejected only on the ground of

mentioning of a wrong provision of law. Learned counsel submits that because of this, the Bank has preferred another Appeal which is pending consideration before the Appellate Tribunal.

13. Learned counsel further submits that in view of the pendeny of Appeal before the Appellate Tribunal against the order dated 04.04.2014, the petitioner cannot be allowed to claim any benefit out of the said impugned order. It is submitted that on 17.12.2014 when the Lok Adalat was organized in the premises of the Tribunal and efforts were being taken to settle the disputes between the intended borrowers, the petitioner gave an impression that he had already made payment of the most part of the bank's dues and only Rs. 96,134/- remained to be paid in his loan account. At this stage, the then Assistant General Manager who did not have the official records of the loan accounts in his custody to enable him to verify the veracity of the statement of the petitioner and in course of his talk on mobile with the concerned Branch Manager he mis-heard that Rs. 96,134/- inclusive of interest and another charges have remained to be recovered. It is under these

circumstances that he became ready to accept the proposal of settlement on further payment of Rs. 20,000/- only, however no Award could be prepared by the Lok-Adalat.

14. It is further contended that later on when it was found that there was a huge amount of Rs. 52,07,624/- outstanding against the petitioner the Miscellaneous Application No. 51 of 2015 was filed which has been allowed by the impugned order.

15. Learned counsel submits that before the Debts Recovery Tribunal, in his affidavit filed on 01.10.2016, the petitioner had not controverted the fact that Rs. 96,134/- together with cost, interest etc. as stated in the compromise order dated 17.12.2014 was a mistaken fact regarding the liability/bank's dues. He had also not denied that the liability of Rs.52,07,624/- was standing as on 30.11.2014. A copy of the affidavit filed by the petitioner in M.A. No. 51/2015 has been annexed as Annexure 'R1/11 to the counter affidavit of the respondent – Bank.

16. It is contended that the judgment of the Hon'ble Supreme Court in the case of **Bharvagi Constructions and others versus Kothakapu Muthyam**

Reddy and others reported in **AIR 2017 SC 4428** and **State of Punjab Vs. Jalour Singh** reported in **(2008) 2 SCC 660** on which reliance has been placed by learned counsel for the petitioner would not be applicable in the facts and circumstances of the case.

17. Learned counsel has supported the impugned judgment by submitting that the learned Tribunal has rightly found that it is a case of recording of compromise based on misrepresentation of facts and has committed no wrong by recalling the order dated 17.12.2014. It is also submitted that the settlement recorded in the order dated 17.12.2014 is against the larger public interest.

Consideration

18. After hearing learned counsel for the parties and on a careful perusal of the records, this court finds that initially the settlement amount of Rs. 27 Lakhs was arrived at as back as on 17.01.2010. Admittedly the compromise was not honoured. Thereafter a certificate of recovery dated 29.03.2011 as contained in Annexure '2' to the writ application, was issued by the learned Presiding Officer, Debts Recovery Tribunal, Patna and for recovery of the said

amount, a recovery proceeding was initiated. The certificate of recovery has not been challenged by filing any statutory appeal and it is thus an admitted position from the record that the certificate amount has not been interfered with in any statutory appeal. What has happened in fact is that on filing of a miscellaneous application being M.A. No. 79/2012, the then learned Presiding Officer dealt with the matter as if the compromise entered into between the parties on 17.01.2010 whereunder the petitioner had agreed to pay Rs. 27 Lakhs, is still open to be revived. In fact by the order dated 25.04.2012 the Miscellaneous Application No. 79/2012 was disposed off by referring to the earlier order dated 17.01.2010 alone. The fact that the 'DRT' had already passed a certificate of recovery on the petitioner's failure to abide by the compromise dated 17.01.2010 was not taken note of. These are the matters of records and hence this court is referring the facts as appearing from the order passed by the learned Tribunal. Again, in M.A. No. 294/2012 which is said to be arising out of M.A. No. 79/2012, another order was passed by the then Presiding Officer and this time a different order was passed, firstly

allowing the petitioner to pay the balance amount in two months and then saying that if he fails to pay the amount within the said period, he must pay 80% of the said amount within the time fixed and the another 20% amount in another one month. Let it be recorded that on both the occasions the miscellaneous applications were preferred when the mortgaged property was notified for auction sale.

19. Admittedly the petitioner failed to abide by the aforesaid order and in yet another miscellaneous application being M.A. No. 378/2013, the then Presiding Officer passed another order on 04.04.2014 which is impugned in appeal before the DRAT. Since the appeal is still pending, this court would refrain itself from giving any observations and opinion on the order dated 04.04.2014. It is for the appellate Tribunal to consider the pending appeal independently and in accordance with law. So far as this court is concerned, it will only declare that the order dated 04.04.2014 being sub-judice before the appellate tribunal, at this stage the petitioner cannot claim any benefit of the said order. All issues arising out of the order dated 04.04.2014 are to be settled by the Appellate Tribunal.

20. So far as the impugned order dated 19.10.2016 (Annexure '13' to the writ application), in M.A. No. 51/2015 is concerned, having gone through the same, this court finds force in the submission of learned counsel representing the respondent – Bank. It is to be kept in mind that the Bank is a custodian of public money, it has it's recovery policy and in a particular case whether a compromise is required to be entered into depends upon various parameters such as quality of loan and the security in hand vis-a-vis the liquidity of the security lying with the Bank etc. In the present case, as has been noticed above, the Bank had got a certificate of recovery of Rs. 34,01,938.21 with interest *pendente lite* and future w.e.f. 01.02.2008, the certificate had not been disturbed by any competent court/Tribunal and the Bank is looking to recover the said amount. The Bank has already filed an appeal being S.R. No. 135/2014 against the order dated 04.04.2014 passed by then then Presiding Officer, DRT, Patna, therefore it may be safely held that so far as the Bank is concerned, they have not accepted the order dated 04.04.2014. In these circumstances, the Bank had an outstanding amount of Rs.

52,07,624/- as on 30.11.2014 in it's ledger and that cannot be said to be baseless. In the Mega Lok Adalat held in the premises of the Tribunal on 17.12.2014, when the petitioner gave an impression that he had already made payment of the most part of the Bank's dues and only Rs. 96,134/- had remained to be paid in his loan account, it was a case of misrepresentation. A perusal of the application giving rise to M.A. No. 51/2015, copy of which has been annexed with the counter affidavit as Annexure R1/10 would show that the respondent – Bank had made a categorical statement in this regard in paragraph 9 & 10 of the application. The petitioner had appeared in the Tribunal and filed an affidavit, in which the specific statements made on behalf of the respondent – Bank were not at all denied. Moreover, if the statements made by the petitioner that in view of payment of Rs. 26,99,700/- the account should be closed in terms of the order dated 04.04.2014 is accepted by this court, it would amount to rendering the appeal preferred by the Bank before the Appellate Tribunal infructuous and the contest of the respondent – Bank against the order dated 04.04.2014 shall not survive, therefore the contention of the

petitioner based on the order dated 04.04.2014 passed by DRT is hereby rejected.

21. The reliance placed by learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in the case of **Tarsem Singh (supra)** and **Jalour Singh (supra)** would not be helpful in the facts of the present case where it is evident from the materials on the record that it is a case of compromise based on misrepresentation of facts. In this connection learned Tribunal has relied upon Section 20 of the Indian Contract Act, 1872 which reads as under:

> "20. Agreement void where both parties are under mistake as to matter of fact – Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void."

22. The reliance placed by learned counsel for the petitioner on the judgment of the Hon'ble Allahabad High Court in the case of **Smt. Soni Kumari Vs. Sri Akhand Pratap Singh** would also not be helpful to the petitioner inasmuch as it would appear that the said case arises out of a matrimonial dispute between the parties in which after the award was passed by the Lok Adalat on the basis of the compromise deed presented by both the sides, the appellant

filed First Appeal under Section 19(1) of the Family Courts Act, 1984. In the First Appeal it was contended that the award was passed without following the procedures laid down under the Family Courts Act and the Legal Services Authority, 1987 and that the appellant was under threat and the award is a result of coercion by the respondent – husband. In the aforesaid background, the Hon'ble Allahabad High Court relied upon paragraph '12' of the judgment of the Hon'ble Apex Court rendered in Jalour's case (supra) which reads as under:

> "12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article

> 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."

23. Further the Hon'ble Allahabad High Court referred some of the paragraphs from the **Bharvagi's Case (supra)**. The Hon'ble Allahabad High Court went into those judgments and took a view that the challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India. In the present case no Award was made in terms of the settlement.

24. The observations of the Hon'ble Supreme Court in the case of **Indian Bank (supra)** and that of the Hon'ble Allahabad High Court in the case of **Shashi Prateek (supra)** on which reliance have been placed by learned Tribunal are also quoted hereunder for a ready reference:

> "The Court cannot lose sight of the fact that the bank is a trustee of public fund. It cannot compromise the public interest for benefiting private individuals. Those who take loan and avail financial facilities from the bank are duty bound to repay the amount strictly in accordance with the terms of the contract. Any lapse in such matters has to be viewed seriously and the bank is

> not only entitled but duty bound to recover the amount by adopting all legally permissible methods. Parliament enacted the act because it was found that legal mechanism available till then was wholly insufficient for recovery of the outstanding dues of the banks and Financial Institutions."
>
> "In view of the aforesaid discussion there can be no scope for doubt to hold that although the provisions of the Act are intended to make award of the Lok Adalat arrived at on the basis of compromise or settlement between the parties to dispute as final and the remedies of appeal, review and revision against the award of Lok Adalats are not available under law as indicated herein before, but being a Tribunal of special nature, the remedy to recall the order/award passed by Lok Adalat on the ground of fraud or misrepresentation or mistake of fact cannot be held to be barred under law, as power to recall its order on the aforesaid grounds is inherent in every court or tribunal or statutory functionary."

25. From the aforesaid observations of Hon'ble Apex Court it may be safely held that the A.G.M. of the Bank who was present on 17.12.2014 could not have compromised the case for a paltry sum of Rs. 20,000/- when the outstanding amount in ledger is more than Rs. 52 Lakhs. It amounts to compromising public interest for benefiting private individual.

26. In my considered opinion the line of

decisions on which learned counsel for the petitioner has relied were not the cases in which the concerned Court/Tribunal which held the Lok Adalat and passed the award was of the view that the award was passed on misrepresentation of facts. Those were not the cases in which the power of the Court/Tribunal in recalling it's judgment/order/award on being convinced that those were based on misrepresentation of facts, came to be challenged and tested. The learned Tribunal has rightly relied upon the judgment of the Hon'ble Apex Court in the case of Indian Banks (supra) which would fully in the facts of the present case. In this case, it is found that a settlement has been entered into by an Officer of the Bank being custodian of the public money without there being any basis and as a result of misrepresentation of facts. The judgment of Hon'ble Apex Court in Indian Bank's case is based on a sound public policy and in a case as crystal as the present one where there is a certificate of recovery in favour of the Bank and that is the basis to say that in the ledger of the Bank the outstanding amount was Rs. 52,07,624/- as on 30.11.2014, if it has been found that the settlement was

recorded on 17.12.2014 because of the misrepresentation of facts, the learned Tribunal has not committed any jurisdictional error in recalling the recorded settlement.

27. In view of the discussions made hereinabove, this Writ Application has no merit. It is dismissed, accordingly.

28. Let it be reiterated that any observation made by this Court in the order are for the purpose of the present cse alone and the same will not have any bearing upon the appeal pending before the Debts Recovery Appellate Tribunal at Allahabad which will be considered independently by the appellate Tribunal.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	A.F.R.
CAV DATE	14.10.2019
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