

(2016) 08 PAT CK 0116

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10468 of 2014

Anjani Kumar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(22), 22

Citation : (2017) ACD 184 : (2016) 165 AIC 731 : (2016) AIR(Patna) 153 : (2016) 3 BBCJ 196 : (2017) 1 DRTC 136 : (2016) 4 PLJR 529

Hon'ble Judges : Mr. Vikash Jain, J.

Bench : Single Bench

Advocate : Mr. Umesh Prasad Singh, Senior Advocate Mr. Rajeev Ranjan Prasad and Mr. Rajendra Kumar, Advocates, for the Petitioner; Kanak Verma, C.G.C, for the UOI; Mr. Ajay Kumar Sinha, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Mr. Vikash Jain, J.(Oral)—Heard learned senior counsel for the petitioner and learned counsel for the respondent bank.

2. The present writ petition has been filed for quashing the judgment dated 02.05.2014 passed by the Presiding Officer, Debts Recovery Tribunal [for short "the DRT"], Patna in O.A. No. 70 of 2012 [Central Bank of India v. Sri Ram Janam Prasad and others] whereby and where under in exercise of his jurisdiction under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 [hereinafter referred to as "the RDDBFI Act"] he has passed a judgment for recovery of Rs. 75,48,762/- with pendente lite and future interest against the petitioner and defendant no. 3 jointly and severally till realization, and has issued a certificate of recovery in terms of the provisions contained in Section 19(22) of the Act.

3. Mr. Umesh Prasad Singh, learned Senior Counsel appearing on behalf of the

petitioner makes a short submission to the effect that impleading the petitioner as a party defendant for the purpose of recovery of the subject dues was completely beyond the competence and authority of the DRT. It is submitted that the action of the Presiding Officer of the DRT is, in the facts and circumstances of the case, mala fide at least in law if not in fact, inasmuch as being merely the disciplinary authority in the disciplinary proceedings held against the erstwhile Branch Manager of the bank, Sri Ram Janam Prasad, the Defendant No. 1, the petitioner could not have been made party as Defendant no. 137 in O.A. No. 70 of 2012 at the instance of the Presiding Officer, DRT, more so on the wrong assumption that the petitioner had exonerated the said Sri Ram Janam Prasad with only minor punishment. It is further submitted that unlike judicial Courts which are empowered under Order 1, Rule 10 C.P.C. to add or strike out the name of a person, whether as plaintiff or defendant, in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, no such power vests in the DRT. It is therefore, submitted that the impugned order of the DRT insofar as the petitioner has been added as Defendant no. 137 at the instance of the Presiding Officer, DRT is wholly arbitrary and without jurisdiction.

4. Learned counsel for the respondent bank appears and has been heard. Despite valid service of notice upon Respondent nos. 5 and 6, neither has entered appearance nor are they represented before this Court.

5. Having heard learned counsel for the petitioner and for the respondent bank, this Court finds merit in the writ petition. The recovery proceeding by filing of an application in O.A. No. 70 of 2012 before the DRT was initiated at the instance of the respondent bank. The bank sought such recovery from its erstwhile Branch Manager, Sri Ram Janam Prasad, and a number of other persons said to be the borrowers. Admittedly, the bank was not seeking recovery of the dues from the petitioner which is evident from the very fact that the petitioner was not impleaded as defendant in the application before the DRT. It is well settled that the plaintiff is the dominus litis and cannot be compelled to sue a person against whom he does not claim any relief. The provisions of Order 1, Rule 10 C.P.C. are, strictly speaking, not available to the DRT for adding a person as defendant, having regard to Section 22 of the RDDBFI Act. Even otherwise, the issues before the DRT could well have been adjudicated in an effectual and complete manner without the necessity of impleading the petitioner.

6. In the above circumstances, the impugned judgment dated 02.05.2014 passed by the DRT, Patna (Annexure-15) in O.A. No. 70 of 2012 insofar as the petitioner has been added as Defendant no. 137 therein, as well as the direction to prepare a certificate of recovery insofar as concerns the petitioner, are hereby set aside.

7. The writ petition accordingly stands allowed to the above extent.