

WP(C) No. 319 of 2014

**BEFORE
THE HON'BLE MR JUSTICE UMA NATH SINGH
CHIEF JUSTICE (ACTING)**

15.09.2014

Mr. M.F.Qureshi, learned counsel appears for petitioner.

Ms. T.Yangi, learned counsel appears for respondents.

I have heard learned counsel for parties and perused the records of the writ petition. Learned counsel for petitioner submitted that he filed an application for amendment of the original application which is pending before the Debt Recovery Tribunal in Guwahati. However, the Tribunal instead of allowing the prayer for bringing subsequent developments on record by way of amendment has observed that the applicant/petitioner should have filed a separate application because the subsequent developments have given rise to a new cause of action. In this regard, it may also not be out of place to refer to an order of learned single Judge of this Court dated 02-12-2013, passed in WP(C) No. 344 of 2013 where liberty had been granted to approach the Debt Recovery Tribunal. The said order on reproduction reads as under:

*"BEFORE
HON'BLE MR.JUSTICE S.R.SEN
WP(C) No.344 of 2013*

02.12.2013

Heard Mr. M.F. Qureshi, learned counsel appearing for and on behalf of the petitioner who submits that the petitioner for certain reasons could not repay the loan, for which notice has been issued by the respondent's Bank asking him to repay the loan failing which his photograph will be published in the newspaper. So, necessary directions may be passed.

Also heard Mrs. T. Yangi, learned counsel who submits that the petitioner instead of coming to the writ court should have approached the Debt Recovery Tribunal.

I agree with the submission advanced by the learned counsel for the respondents. In my considered view, in such a case writ does not lie. Let

the petitioner approach the Debt Recovery Tribunal if he desires so. In the meantime, for 1 (one) month's time respondents will not publish the photograph of the petitioner.

With this observation and direction, this writ petition stands disposed of.

*Sd/-
JUDGE"*

Learned counsel for petitioner thus submits that the Tribunal should not have rejected the application and insisted upon filing a separate application. On the other hand, learned counsel for the respondents-Bank, Ms. T.Yangi, contends that the Tribunal has not rejected the application on merit but has only observed that a separate application should have been filed on an independent cause of action. As the matter relates to recovery of loan which falls within the jurisdiction of the Debt Recovery Tribunal, under the SARFAESI Act, 2002, it would be inappropriate to exercise writ jurisdiction and interfere in the matter. Moreover, the Tribunal has already made the observation vide order dated 11-08-2014 to file separate original application. The observation is reproduced as under:

"In the present case in hand, it is evidently clear that the misc. applicant wants amendment for a new cause of action that too beyond the period of limitation. It is also observed that in effect, the amendment sought in the petition is nothing but drafting/ filing fresh application with a new cause of action beyond the period of limitation and without paying court fees and wants to infuse oxygen in the dead body.

In view of the above, the misc. application No. 325/2014 filed by the misc. applicant is devoid of merits and liable to be dismissed."

Thus, this writ petition is dismissed with liberty to approach the Tribunal in terms of observation made in the impugned order.

CHIEF JUSTICE (ACTING)

S.Rynjah

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Ms. B.Ryntathiang, learned counsel appearing on behalf of Mr. R.Kar, learned counsel on record, prays for adjournment on the ground that learned counsel on record is unwell having undergone Bypass surgery. Thus, as per request, the matter is directed to be listed after 2(two) weeks. List on 01-10-2014.

CHIEF JUSTICE (ACTING)

S.Rynjah

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Learned counsel for respondents No.1, 2 and 3 prays for and is granted 2(two) weeks' time to file reply.

Issue notice to respondent No.4 bothway, namely, by Registered Post as well as Dasti. List on 30-9-2014.

CHIEF JUSTICE (ACTING)

S.Rynjah