IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6466 of 2014

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Md. Saleem Rizvi, Son of Late Md. Nayeem, Hotel Daizy, 6 Complex, Dariyapur Road, Baripath, P.S.- Pirbahore, District- Patna

.... Petitioner/s

Versus

1. The Union of India, through Registrar, Debt Recovery Tribunal, Lal Bhawan, Bank Road, Patna- 1
2. The Recovery Officer, Debt Recovery Tribunal, Lal Bhawan, Bank Road, Patna- 1
3. The Central Bank Of India, Boring Road, P.S.- Sri Krishnapuri, Town And District- Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sahvind Kumar Sharma, Advocate.
For the Resp No. 1	:	Mrs. Kanak Verma, C.G.C.
For Resp No. 3	:	Mr. Nishi Nath Ojha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 22-01-2015 Heard learned counsel for the parties.

2. This writ application was filed on 31.03.2014 praying therein for grant of following relief:

> *"1. That this is an application on behalf of the petitioner for quashing the Proclamation of Sale Letter, issued by Debt Recovery Tribunal, Patna in R.P. No. 204 of 2012, whereby and whereunder learned D.R.T. issued Sale Letter on 12.2.2014 in which the date of auction of the property has been fixed on 09.04.2014."*

3. Strictly speaking though the aforementioned impugned order passed by the recovery officer was appellable before the Presiding Officer of the Debts Recovery Tribunal (hereinafter referred to as 'the D.R.T.') , this Court, in view of the extreme urgency flowing out of the sale notice dated 12.02.2014 fixing the date of auction on 09.04.2014, had entertained the same.

In fact, a reasoned interim order thereafter was also passed on 9.4.2014, which for the sake of clarity and convenience is quoted herein below:-

> *"Learned counsel for the petitioner submits that the certificate was issued by the Debts Recovery Tribunal, Patna for an amount of Rs.28,19,394.75 which along with interest till 12.3.2013 came to Rs.41,43,829.47. It is further submitted that in the proclamation of sale issued by the Recovery Officer two plots of land have been shown; one 62 ¼ decimals for which the reserve price has been fixed at Rs.2,27,00,000/- and another of 1 acre for which the reserve price has been shown as Rs.3.2 crores. It is further submitted that even if the loan with interest is taken to be in the range of Rs.46-47 lacs as of today, then a quarter of the first property if sold as per the reserve price fixed would be sufficient to liquidate the entire loan amount with some surplus amount for being returned to the petitioner.*
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> *On a consideration of the aforesaid facts and circumstances, this Court is quite surprised that an attempt is being made to sell all the properties of the petitioner when the reserve price itself shows that a part of the first property would be sufficient for the recovery of the loan amount with interest.*
>
> *As prayed for by learned counsel for the Central Bank of India, put up on 23rd April, 2014 to enable him to seek instructions and file the counter affidavit particularly with regard to the area of land that is required to be sold, so that the entire amount of the Bank may be recovered and the modalities through which such sale ought to be effected.*
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> *Until further orders, the proceedings before the Recovery Officer are stayed and it is directed that in case any offer has been received pursuant to the e-auction that has been fixed for today, the same shall not be proceeded with".*

4. Today, when this writ application has been placed for final disposal, Mr. Anshuman, learned counsel appearing on behalf of the intervener, at the outset, has sought to press the prayer made in I.A. No. 7706 of 2014 seeking intervention of one Rajeshwar Rai on the ground that he has purchased two Kathas of land from the chunk of 62¼ decimals of land of the petitioner on

21.03.2005 and, therefore, he should be made party to this writ application in order to protect his interest in the proposed auction sale. He has also submitted that the respondents be directed to sale such land of the petitioner which is not covered by the sale deed in favour of the aforesaid Rajeshwar Rai.

5. First of all, this intervention application is wholly misconceived for a simple reason that if the property of the entire 62¼ decimals of land had already been mortgaged by the petitioner in favour of the Central Bank of India (hereinafter referred to as 'the Bank'), any sale deed executed by the petitioner in favour of Rajeshwar Rai was *ab initio void* and in fact Rajeshwar Rai had purchased a bag of wind. The issue as to whether the action of the respondents in putting the aforesaid plot on auction sale for realization of the dues of Bank being the core issue in this writ application, this Court does not feel it necessity for addition of Rajeshwar Rai as party respondent to this writ application. The prayer made on behalf of Rajeshwar Rai in I.A. No. 7706 of 2014, for being added him as party, is hereby rejected.

6. Reverting back to the core issue involved in this writ application, when learned counsel for the Bank has fairly submitted that the total demand of the Bank against the petitioner

is only to the tune of Rs. 97,71,718/- as on date, this Court will have no hesitation in holding that the action taken by the recovery officer of the DRT putting both of the properties of the petitioner on sale, was wholly unjustified inasmuch as from the first property itself, consisting of the entire area of 62¼ decimals of land of the petitioner the aforesaid due amount of Bank of Rs. 97,71,718/- could have been recovered because its reserved price was Rs. 2.27 crores.

7. In that view of the matter, this Court would hold that the action taken by the recovery officer in putting another piece of land of one acre of the petitioner on a reserve price of Rs. 3.2 crores was wholly arbitrary and unjustified. This Court would, accordingly, quash the impugned auction notice to the extent of putting the property of the petitioner relating to his one acre of land, and direct him to issue another auction notice limited only to auction of the plot measuring 62¼ decimal having reserved price of Rs. 2.27 crores.

8. At this stage, the submission of learned counsel for the petitioner that only part of the land measuring 62¼ decimals, for the auction will suffice the requirement of the Bank has to be noted for its being rejected. Once, the whole property is mortgaged, the Bank cannot choose any portion thereof for

creation of future litigation either at the hand of the petitioner or the persons alike the purchaser including Rajeshwar Rai.

9. Though it may be true that when such an auction is held for the entire 62¼ decimals of land, the recovery officer, having sold the property, would be under obligation to return the rest of the amount beyond the loan amount of the Bank, but then this Court cannot direct the recovery officer to go for auction of only part of 62¼ decimals of land. Thus this Court would direct for holding auction of the plot of land of the petitioner measuring $62^{1/4}$ decimals and having allowed the Bank to recover its own amount of dues, pay the balance amount to the petitioner in accordance with law.

10. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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