IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12718 of 2015

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1. Indu Kumari, wife of Manoj Kumar Jha, Resident of Mohalla Sarvodya Nagar, Police Station Begusarai (Town), District Begusarai
2. Binod Kumar son of Baldeo Jha, resident of Dak Bunglow Road, in front of Subham Enterprises, Proprietor of Samar Medico Agency, P.S. Begusarai (Town), District Begusarai

.... Petitioners

Versus

1. The Punjab National Bank, through its Circle Head Cum Regional Manager, Circle Office, Darbhanga at Darbhanga, District Darbhanga.
2. The Branch Manager, Punjab National Bank, Begusarai Branch, District Begusarai

.... Respondents

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Appearance :

For the Petitioners : Mr. Manish Kumar No-2, Advocate

For the Respondents: Mr. Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-09-2015

The present writ petition has been filed for setting aside the auction notice published in the daily newspaper "Hindustan" dated 18.04.2015 issued under the signature of the Authorized Officer, Punjab National Bank for auction of the house of the petitioners on 20.05.2015 at 3.00 P.M. and for a further direction to the respondent-Bank to not hand over possession to any person if the auction has taken place.

2. The petitioners had availed the facility of cash credit account from the respondent-Punjab National Bank in 1997 but in view of the petitioners' business having incurred huge loss, the business had to be closed down and the repayments could not be made by the petitioners.

The respondent-Bank took steps for realization of its dues including action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act").

3. Learned counsel for the petitioners submits that notwithstanding all past litigation between the parties, petitioners would be willing to make repayment of the remaining amount if the auction sale of house of the petitioners has not already been concluded. He relies on the decision of this Court in *M/s Dayal Fuel Industry Vs. Bihar State Financial Corporation & others* [2009 (1) PLJR 800] to the effect that if the auction sale has not reached finality and legal formalities for sale have not been completed nor the document having been registered, the defaulter would be given an opportunity to settle his liability.

4. Learned counsel for the respondent-Bank, on the other hand, invites attention to the order dated 21.07.21014 passed by this Court in CWJC No.12270 of 2014 wherein the petitioners had approached this Court for similar relief in connection with the possession notice dated 07.11.2007 issued under Section 13(4) of the SARFAESI Act and for quashing the advertisement for auction sale of the property on the ground that the petitioners were ready to repay the loan amount owing to the Bank. The said writ petition was, however, after some

arguments, permitted to be withdrawn to enable the petitioners to pursue their pending contempt application, making it clear that the petitioners would have no liberty to move this Court again for the same cause of action. He also refers to paragraph 4 of the counter affidavit to show that the petitioners have repeatedly approached this Court in the past on not less than six earlier occasions apart from also approaching the Debts Recovery Tribunal in SA No. 28 of 2012 but, however, full payment was never made by the petitioners despite time having been extended twice by this Court.

5. It is also submitted by learned counsel for the respondent-Bank that the auction sale was made on 20.05.2015 and the entire bid amount has been deposited by one Ram Shekhar Singh, pursuant to which the respondent-Bank has already issued sale certificate in his favour on 13.06.2015. Reliance is placed on the decision of the Hon'ble Apex Court in *United Bank of India Vs. Satyawati Tondon and others* [(2010) 8 SCC 110], inter alia, reiterating that the exercise of writ jurisdiction in DRT and SARFAESI matters despite availability of statutory remedies have serious adverse impact on the right of banks and other financial institutions to recover their dues.

6. In the facts and circumstances of the case and in view of the law laid down by the Hon'ble Supreme Court as noticed above, even if for argument's sake the impugned order dated 18.04.2015 is treated

as a fresh cause of action and thus open to challenge before this Court notwithstanding that the petitioners had been prohibited from approaching this Court in terms of the order dated 21.07.21014 passed by this Court in CWJC No. 12270 of 2014, the petitioners have not been able to satisfy this Court for not having availed the alternative remedy by way of statutory appeal under Section 17 of the SARFAESI Act and instead approaching this Court directly.

7. This Court therefore finds no ground for interference and the writ petition, accordingly stands dismissed.

(Vikash Jain, J)

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