

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14801 of 2009**

=====

Rajeshwar Singh S/O Shri Kedar Nath Singh, R/O Kanta Brick Field,  
Makhla, Uttarpara, Distt.- Hooghly (West Bengal)

.... .... Petitioner/s

Versus

1. Punjab National Bank, Boring Road Branch, Patna through its  
Authorised Officer, A.R.K. Prasad
2. A.R.K. Prasad, Authorised Officer, Punjab National Bank, Boring Road  
Branch, Patna
3. M/S K.C. Traders through its Proprietor Kedar Nath Singh S/O Late  
Jagdambh Pd. Singh M/S Bajrang Cold Storage, Nasariganj, Digha,  
Patna

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : None.

For the Respondent No.1 & 2 : Mr. Suresh Pd. Singh No.1  
Mrs. Kumari Rashmi

=====

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA**  
**ORAL ORDER**

3      04-02-2015                      The petitioner, being aggrieved by the judgment and  
order dated 06.07.2009 (Annexure-6) passed by the learned Debts  
Recovery Tribunal, for the State of Bihar, at Patna, has filed the  
present writ petition under Article 226 of the Constitution of India.

In compliance of the order dated 06.11.2009, a counter-  
affidavit has been filed on behalf of the respondent Bank  
controverting the claims raised on behalf of the petitioner.

This matter was listed yesterday (03.02.2015) for its  
final disposal, but despite repeated calls, none had appeared on  
behalf of the petitioner. Hence, by oral order, the matter was  
passed over for the day. When this matter has been called out once  
again today for its final disposal, none appears on behalf of the  
petitioner in support of the present writ petition, despite repeated  
calls. However, Mr. Suresh Prasad Singh No.1, learned counsel  
appearing on behalf of the respondent no. 1 and 2, is present and  
has been heard. He has raised the question of maintainability of

the present writ petition on the ground that the petitioner has not exhausted his alternative and efficacious remedy available to him in terms of Section 18 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short "SARFAESI Act").

The claim of the petitioner has been rejected by the impugned judgment by the learned Tribunal by holding therein that the petitioner is neither borrower nor the guarantor and has not executed any document with the Bank. Therefore, he had no right to invoke the jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Admittedly, the impugned judgment and order is appealable in terms of Section 18 of the SARFAESI Act. The issues of facts raised on behalf of the parties are required to be conclusively decided by the statutory authorities/ bodies. Only thereafter the orders passed by such authorities/ bodies can be tested in a proceeding under Article 226 of the Constitution of India. In the present case, the statutory remedy of appeal available to the petitioner with respect to the issues of facts has not been exhausted by him and he has directly come to this Court in the present proceeding.

For the reasons recorded above, this Court is not inclined to interfere with the impugned judgment and order, as contained in Annexure-6 to the writ petition.

In the result, the writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs.

**(Birendra Prasad Verma, J)**

BTiwary/-

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|