IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1935 of 2013

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Chhotey Lal Singh, S/O Ram Pravesh Singh, R/O Village- Arthu, Police Station- Dinara, District- Rohtas at Sasaram, Proprietor M/S Jai Hanuman Mini Rice Mill, Arthu, District- Rohtas

.... Petitioner/s

Versus

1. The Chairman, Madhaya Bihar Gramin Bank Head Office, Mina Plaza, South of Museum, Patna
2. The Regional Officer Regional Office, Madhaya Bihar Gramin Bank, Rohtas at Sasaram
3. The Branch Manager Madhaya Bihar Gramin Bank, Ganj Bharashara Branch, Rohtash
4. Mr. Nirmal Prasad Gupta, S/O not known to the petitioner the then Branch Manager, Madhaya Bihar Gramin Bank, Ganj Bharashara Branch, Rohtas at Sasaram

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bibhakar Tiwary
Mr. Sushil Kumar Singh

For the Respondent/s : Mr.Mahesh Narayan Parbat, Sr.Adv.
Mr.V.P.Srivastava
Mr.Sanjay Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL ORDER

3 18-05-2015 Heard the parties.

The petitioner, a borrower of Madhya Bihar Gramin Bank, Patna, has filed the present writ petition assailing the validity and correctness of the notice dated 26.04.2012 (Annexure-5) issued under Section 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"), wherein it has been stated that the petitioner defaulted in making payment of installments as a result of which his account was classified as NPA on 31.10.2010. Therefore, the petitioner has been directed to pay outstanding dues of the Bank to the tune of Rs.21,30,715.50 with further interest with effect from 01.01.2011 within a period of 60 days from date of the said notice.

Learned counsel appearing on behalf of the petitioner submits that, as a matter of fact, the petitioner was prepared to liquidate the entire outstanding dues of the respondent Bank, but proper account regarding outstanding dues was not provided by the respondent no.4 and, therefore, despite his willingness he could not pay the outstanding dues. It is further contended that even today the petitioner is ready to get the entire dispute settled with the respondent Bank by paying all the lawful dues of the respondent Bank.

Though, this writ petition was filed way back on 28.01.2013, after service of its copy upon the learned counsel appearing on behalf of the respondent Bank, yet counter affidavit has not been filed on behalf of the respondents till date. However, learned senior counsel appearing on behalf of the respondents submits that the present writ petition is premature. According to him, against the impugned notice issued by the Bank under Section 13(2) of the SARFAESI Act, the petitioner has an alternative and efficacious statutory remedy in terms of Section 13(3-A) of the SARFAESI Act before the respondent Bank itself. He further submits that, if any representation/objection is filed by the petitioner with respect to the impugned notice in terms of Section 13(3-A) of the SARFAESI Act before the respondent no.3 within a period of two weeks from today, then such representation/objection filed by the petitioner shall be considered by the authorized/competent officer of the Bank in accordance with law and, if the petitioner shows his willingness for paying the lawful dues of the Bank, then all endeavours shall be made to settle his account amicably.

At this stage, it would be relevant to mention that the learned senior counsel appearing on behalf of the Bank, on instructions, has fairly conceded that the action under Section 13(4) of the SARFAESI Act has not been taken against the petitioner till date by the respondent Bank.

In view of the aforesaid fair stand taken by the learned counsel appearing on behalf of the petitioner as also learned senior counsel appearing on behalf of the respondents, the present writ petition is disposed of with a direction to the petitioner to file a representation/objection in terms of Section 13(3-A) of the SARFAESI Act within a period of two weeks from today, raising all the pleas, which have been raised in the present writ petition. Thereafter the authorized/competent officer of the respondent Bank shall take into consideration the representation/objection filed on behalf of the petitioner and shall pass appropriate final order in accordance with law.

It is clarified that this Court has not gone into the merits of the claims raised on behalf of either parties and it is left to be decided by the competent/authorized officer of the respondent Bank in accordance with law.

The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

Arvind/-

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