

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15326 of 2015

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1. Abhimanyu Kumar Singh,
 2. Abhijeet Kumar Singh, Both son of Sri Arjun Singh, Both residents of Village-Singhi Khurd, Ward No.1, P.O. & P.S.-Arrah Town Distt-Bhojpur.

.... Petitioner/s

Versus

1. The I D B I Bank Ltd., a Company incorporated and registered under the Company Act 1956 and banking company within the meaning of section 5 of the banking Regulation Act 1949, having its registered office at IDBI Tower, WTC complex, Cuffe Parade, Mumbai- 400005.
2. The Branch Manager, IDBI Bank Ltd. Uma Complex Branch, Fraser Road, Patna-1.
3. The Recovery Officer, Debt Recovery Tribunal, H.No 34, opposite Police Lines, Jaya House, Lodipur, Patna-800005.
4. Sri Arjun Singh, son of Late Rajnath Singh,
5. Smt. Bimla Devi, wife of Sri Arjun Singh, Both resident of Mohalla-Rukunpura, Near Singh Petrol Pump, P.O.+P.S. Rukunpura Town & District- Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Manik Ved Sen, Advocate
Mr. Upendra Mishra
For the IDBI : Mr. Jitendra Kumar Roy, Advocate
Mr. Shivendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 29-09-2015 Heard Mr. Manik Ved Sen, learned counsel for the petitioners and Mr. Shivendra Kumar Roy, learned counsel for the IDBI Bank Ltd.

The petitioners attempt to question the sale proclamation made under the orders of the Debt Recovery Tribunal, Patna in Recovery Proceeding No. 151 of 2013 *inter alia* on grounds that the property put on sale is a joint family property and the private respondent nos. 4 and 5 have mortgaged the same as a collateral security for the loan advanced without obtaining consent of the

writ petitioners.

According to Mr. Ved Sen since the property put on sale is in the nature of joint family property hence it is only that part of the property which can be put on sale which would represent the interest of the private respondents. The petitioners in other words seek a modification in the property descriptions mentioned in the Schedule to the proclamation of sale.

It is submitted by Mr. Ved Sen that an application has been filed before the Debt Recovery Tribunal in R.P. Case No. 151 of 2013 bringing these facts to the notice of the Recovery Officer with a prayer for modification of the certificate of sale.

The argument of Mr. Ved Sen is contested by learned counsel appearing for the Bank to submit that the situation is otherwise and the property put on sale is the exclusive property of the Directors of the company i.e. the private respondents herein and thus the argument that the property on sale proclamation, is a joint family property, is not correct. Learned counsel for the Bank also attempted to question the jurisdiction of the Recovery Officer to investigate in the matter on the objection so filed by the petitioners but Mr. Ved Sen, learned counsel for the petitioners with reference to Section 28(5) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 read with Section 29 thereof and with reference to clause-11 of the second schedule to

the Income Tax Act contended that the Recovery Officer has been vested with sufficient powers to investigate on any such objection. He thus submits that the objection so filed on behalf of the petitioners which stands noted in the order sheet, requires a disposal.

Having heard learned counsel for the parties and considering the nature of dispute raised in the backdrop of the fact that an objection has been filed by the petitioners before the Recovery Officer in R.P. Case No. 151 of 2013, the writ petition is disposed of with a direction to the Recovery Officer, Debt Recovery Tribunal, Patna to consider and dispose of the objection so filed by the petitioners in accordance with law and after hearing the contesting parties expeditiously and preferably within four weeks from the date of receipt / production of a copy of this order.

It goes without saying that the final orders in the recovery proceedings on the proclamation of sale would await the disposal of the objections filed by the petitioners and let no third party rights be created.

(Jyoti Saran, J)

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