IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9014 of 2010

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Dauli Kumari, W/O Lalan Prasad Singh, R/O Mian Chak Ratanpur, 21, Town Police Station, District- Begusarai. .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Collector-cum-Certificate Officer, Begusarai.
3. The Regional Manager, Bank of Baroda (Bihar Region),Patna.
4. The Branch Manager, Begusarai, Branch, Bank of Baroda.
5. Ram Niti Prasad, S/O Sri Balmiki Prasad Singh, Proprietor, R. N. Medical Agency, Begusarai, R/O Village Tekanpura, Post Office Defarpur, P.S. Nao Kothi, District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the Respondent Nos. 1 & 2	:	Mr. Sanjay Kumar, AC to AAG 6
For the Respondent Nos. 3 & 4	:	Mr.Nishi Nath Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 20-03-2015

Heard the parties.

2. The matter at issue is action taken by the respondent Bank of Baroda against the petitioner Under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act, 2002").

3. The petitioner, being one of the guarantors of the loan amount taken by the respondent no.5, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of notice dated 14.03.2008 (Annexure-4) issued under the signature of the respondent Deputy Regional Manager of the Bank of Baroda under Section 13 (2) of the SARFAESI Act, 2002. The petitioner is also aggrieved by the order dated 27.08.2005 passed in Certificate Case No. 1 of 2002-03 by the respondent District Collector-cum-Certificate Officer, Begusarai whereby the notices have been issued to the petitioner besides others to show cause as to why the land given by way of collateral security should not be auctioned sold for recovery of term loan amount.

4. Learned counsel appearing on behalf of the petitioner has submitted that for recovery of term loan amount, the respondent Bank ought not to have started two separate proceedings : one under SARFAESI Act, 2002 and another under Bihar & Orissa Public Demands Recovery Act, 1914**.** According to him, under the SARFAESI Act, 2002 without following the procedure prescribed under the law, the Bank is proceeding further for taking action under Section 13 (4) of the SARFAESI Act, 2002, which is not sustainable in law.

5. Two separate counter affidavits one on behalf of the respondent no.2 and another on behalf of the respondent nos. 3 and 4, as also a supplementary counter affidavit on behalf of the respondent nos. 3 and 4 and second supplementary counter affidavit again on behalf of the respondent nos. 3 and 4 have been filed resisting the prayer made on behalf of the petitioner in the present writ petition. Learned counsel appearing on behalf of the respondent Bank has submitted that the action taken under the SARFAESI Act, 2002 is appealable under Section 17 of the SARFAESI Act, 2002 and in view of the judicial pronouncements of the Hon'ble Apex Court in different cases, the petitioner may be relegated under Section 17 of the SARFAESI Act, 2002. By referring to the averments made in the supplementary counter affidavit, he submits that the respondent no.5 had taken a cash credit facility of Rs.5,00,000/- from Begusarai Branch of Bank of Baroda. The present petitioner and one Bishundeo Prasad Sinha stood as guarantors and mortgaged their respective properties. According to him, borrower failed to repay the loan amount as a result of which his account was declared Non-Performing

Asset way back on 30.09.2000. It is pointed out that in the above background, notice under Section 13 (2) of the SARFAESI Act, 2002 was issued on 18.08.2006 for recovery of Rs.11,52,127.00 which includes interest up to 30.06.2006. According to him, despite aforesaid notice, Bank's debts were not re-paid. Therefore, action under Section 13 (4) of the SARFAESI Act, 2002 was taken by issuance of notice on 15.12.2006 taking possession over the secured properties. However, despite repeated queries, learned counsel appearing on behalf of the respondent Bank has not been able to satisfy this Court that once action was taken on 15.12.2006 in terms of Section 13 (4) of the SARFAESI Act, 2002, then what was the occasion for issuance of fresh notice under Section 13 (2) of the SARFAESI Act, 2002 on 14.03.2008 (Annexure-4). During course of hearing, a second supplementary counter affidavit has been filed today on behalf of the respondent nos. 3 and 4 wherein it has been stated that after issuance of impugned notice dated 14.03.2008 (Annexure-4), no further action has been taken by the respondent Bank.

6. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the proceeding under Section 13 of the SARFAESI Act, 2002 is required to be started afresh by the respondent Bank. It is true that the order/action taken under Section 13 (4) of the SARFAESI Act, 2002 is appealable under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal, but in the present case, a notice under Section 13 (2) of the SARFAESI Act, 2002 was issued on 18.08.2006 and further action was taken under Section 13 (4) of the SARFAESI Act, 2002 on 15.12.2006 itself taking possession over the secured properties/asset, then this Court fails to appreciate as to what was the occasion for issuance of a fresh notice in the year 2008 (Annexure-4) in terms of Section 13 (2) of the SARFAESI Act, 2002. Since there was some confusion about the steps taken by the respondent Bank under Section 13 of the SARFAESI Act, 2002, this Court orally requested the learned counsel appearing on behalf of the Bank to ask some competent Officer to appear before this Court with relevant records. Accordingly, Mr. Rahul Sharma, the Credit Officer of the Bank appeared before this Court on 18th March, 2015 when matter was heard for some times. The matter was again argued on 19th March, 2015, but the Officer present in the Court could not explain as to why there was aforesaid confusion when entire action under Sections 13 (2) and 13 (4) of the SARFAESI Act, 2002 was taken in the year 2006 itself, then why fresh notice was issued on 14.03.2008 (Annexure-4) under Section 13 (2) of the SARFAESI Act, 2002. It is equally true that once notice is issued under Section 13 (2) of the SARFAESI Act, 2002, then the borrower/guarantor has a right to file a representation or to raise objection whereafter the Secured Creditor is obliged to consider the representation or objection in terms of Section 13 (3A) of the SARFAESI Act and only thereafter action under Section 13 (4) of the SARFAESI Act, 2002 can be taken. From the materials available on record, it is apparent that the procedures prescribed under Section 13 of the SARFAESI Act, 2002 have not been properly followed by the Bank. There appears to be great confusion about the actions taken under Section 13(2) or 13(4) of the SARFAESI Act. Therefore, the procedure adopted and action taken by the Bank cannot be sustained in the eye of law.

7. For the reasons recorded above, impugned notice dated 14.03.2008 contained in Annexure-4 issued under Section 13 (2) of the SARFAESI Act, 2002 and any other further action taken under Section 13 (4) of the SARFAESI Act, 2002 with respect to the secured asset/properties of the petitioner is hereby quashed and set aside with a liberty to the Bank to issue a fresh notice to the petitioner under Section 13 (2) of the SARFAESI Act, 2002. If such a notice is issued by the Bank, then the petitioner shall be obliged to file an objection/representation, if so required, and if such an objection or representation is filed on behalf of the petitioner, the Bank-secured Creditor shall consider the same in terms of Section 13 (3A) of the SARFAESI Act strictly in accordance with law and only thereafter shall proceed further under the provisions of SARFAESI Act, 2002.

8. So far as the order dated 27.08.2005 passed in Certificate Case No. 1 of 2002-2003 is concerned, the petitioner shall be at liberty to file an objection and if such an objection is filed, the same shall be considered and decided by the Certificate Officer strictly in accordance with law.

9. The writ petition stands finally disposed of with the observations and directions made above, but there shall be no order as to costs. Interim order dated 20.05.2010 passed by a Bench of this Court stands vacated.

(Birendra Prasad Verma, J)

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