IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15554 of 2008

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1. Lalan Kumar Gupta, son of late Baidynath Prasad.
2. Asha Devi, Wife of Lalan Gupta.

Both resident of Mohalla Hridaya Ganj, P.S. Katihar, Dist. Katihar.

.... Petitioners

Versus

1. The Branch Manager, Allahabad Bank, Katihar Branch Mahatima Gandhi Road Katihar, P.S. Katihar, Dist. Katihar.
2. The Authorized Officer, Allahabad Bank, Zonal Office, Budha Margh, P.S. Kotwali, Dist. Patna.
3. The State of Bihar, through the District Magistrate, Katihar.
4. Smt. Nitu Kumari, Wife of Sri Amit Kumar, Resident of Behind Gauri Hotel, New Zero Mile Chowk, Abhiyapur, Dist. Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha 4
Mr. Sanjay Kumar Mishra
For the Respondent/s : Mr. H.P. Singh, (GA6)
Mr. Ajay Kumar Sinha
Mr. Suman Kumar Jha
For the Resp. No.4 : Mr. Dronacharya, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 05-01-2015 Heard learned counsel for the parties as with regard to the following relief made in this writ application:-

> *"1. ----- for quashing the Annexure-4 whereby the respondent no.2 has issued a notice under section 13(4) of the SARFAESI Act 2002 whereby respondents has illegally issue the 'NOTICE OF SALE" on the basis of demand notice dtd. 01.08.07 and properties of petitioner which is a residential house has been put an public auction/Tender fixed on 29/9/08 without given opportunities to the petitioner.*
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> *And also for an appropriate direction to respondents for not to proceed further in operation of the Annexure-4 during the pendency of this writ*

petition."

2. Let it be noted that during pendency of this writ application, the petitioners, having filed supplementary affidavit, had brought on record that their residential house had already been auction sold by the Allahabad Bank in favour of the respondent no. 4 for a sum of Rs. 4 lac which was deposited by her on 6.10.2008. Accordingly, the respondent no.4 was also impleaded as party vide order of this Court dated 7.5.2010.

3. Today learned counsel for the Bank has informed that the petitioners owe a sum of Rs. 5,41,828/- against the housing loan taken by them.

4. Learned counsel for the Respondent no. 4 has submitted that even when Respondent no. 4 had deposited a sum of Rs. 4 lacs as auction amount by way of sale of house of the petitioner in her favour she was not given its possession due to interim order of stay passed by this Court on 24.10.2008. It has been also submitted that Respondent no. 4 would no longer be interested to take possession of the house of the petitioner but she must be suitably compensated.

5. Learned counsel for the petitioner having produced a cheque of Rs. 3,50,000/- drawn by the petitioner in the name of the Bank has on instructions from the petitioner present in

the court room agreed to pay up to date interest @ 9% to the Respondent no. 4 in the sum of Rs. 4 lacs for the period 6.10.2008 onwards.

6. This Court has also heard learned counsel for the petitioner, Bank and respondent no.4 at length and in view of their respective submission as noted above this writ petition is disposed of with consent of the parties on the following terms and conditions:-

i. The petitioners shall pay the an amount of Rs. seven lacs to the Bank on or before 16.03.2015 out of which the bank shall pay principal amount of Rs. 4 lacs and interest @ 9% per annum to Respondent no. 4.

ii. The petitioners shall also be liable pay interest to the respondent no.4 over the principal amount of Rs. 4 lac deposited by her at the rate of 9% per annum by way of simple interest for the entire period i.e. 06.10.2008 to the date of full payment of Rs. 4 lacs.

iii. A sum of Rs. 3,50,000/- being deposited by the petitioners today by a cheque in the name of the Branch Manager, Allahabad Bank, Katihar dated 5.1.2015 and handed over to the learned counsel for the Bank will be treated to be the first installment against the amount of Rs. 7 lac to be paid by the petitioner towards the balance outstanding of the Bank and interest payable to the respondent no.4.

iv. The entire amount of Rs. 3,50,000/- being paid today by way of first installment by the petitioners shall be credited to the account of the respondent no.4 by the Bank within a period of fifteen days from today.

v. The petitioners shall pay their second installment of a sum of Rs. 2 lacs on or before 5.2.2015 to the Bank and the Bank shall pay the entire amount to respondent no.4 on or before 15.2.2015 towards the balance of principal of Rs. 4 lacs and the interest @9% per annum for the period 6.10.2008 onwards.

vi. The petitioners shall, thereafter, pay the third and last installment of Rs. 1,50,000/- on or before 16.03.2015.

vii. The Bank shall refund excess amount, if any, to the petitioner by 31.3.2015 after paying the principal amount of Rs. 4 lacs and full interest @ 9 % per annum to the respondent no.4 as well as retaining its Rs. 1,41,828/- against the total balance outstanding of Rs. 5,41,828/-.

viii. Failure on the part of the petitioners to pay any of the installment payable on or before 5th of February 2015 and/or 16th of March, 2015 shall automatically disentitle the petitioners to claim the benefit of settlement and in that event the possession of the house of the petitioner in question, shall be taken by the Bank and handed over to the respondent no.4.

ix. The Bank shall also ensure that the entire amount of principal and interest payable to the respondent no.4 from the amount of Rs. seven lacs furnished by the petitioners is passed on immediately so that the respondent no.4 recovers her entitled principal amount of Rs. 4,00,000/- as also interest at the rate of 9% per annum (simple interest) on or before 20th of March, 2015.

x. The Bank shall on making payment to the Respondent no. 4 of her principal amount and interest in the manner indicated above and also after realisation of Rs. 1,41,828/- against its B.O.S. of Rs. 5,41,828/- from the petitioners shall hand over the original documents of the house of the petitioners along with a no dues certificate in favour of the petitioners on or before 31.03.2015.

(Mihir Kumar Jha, J)

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