IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16720 of 2009

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Nidhi Roy @ Nidhi Jha W/O Sri Abhay Kumar Jha, R/O Mohalla Balbhadrapur, P.S. Laheriasarai, Distt.- Darbhanga

.... Petitioner/s

Versus

1. The Chief General Manager, Bank of Baroda, Bihar, Patna
2. The Deputy Regional Manager-Cum-Authorised Officer, Bank of Baroda, Bihar, Patna
3. The Branch Manager, Bank Of Baroda, Darbhanga Branch, Tower Chowk, Darbhanga

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Md. Sajid Salim Khan
Mr. Rana Vikram Singh
For the Respondent/s : Mr. Ratnesh Nandan Sinha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 23-02-2015

Heard the parties.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of sale notice dated 06.11.2009 (Annexure-7) issued under the provisions of Section 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short "SARFAESI Act").

It is not in dispute that the petitioner, being proprietor of M/S Ambay Farma, a whole-sale and retail dealer in medicine business, had availed of a cash credit loan of Rs. 8 lacs from the Bank of Baroda from its Branch office at Tower Chowk, Darbhanga. By way of collateral security, the petitioner had mortgaged her immovable property in favour of the Bank. It is also not in dispute that the writ petitioner defaulted in making payment of loan amount, as a result thereof, a notice was issued to the borrower- the writ petitioner in terms of Section 13(2) of SARFAESI Act. After expiry of statutory period, since loan amount could not be recovered, impugned notice dated 06.11.2009 in terms of Section 13(4) of SARFAESI Act was issued putting the secured property of the borrower under sale.

Learned counsel appearing on behalf of the petitioner though has argued the matter at some length, but has fairly submitted that there is no illegality or irregularity in the impugned sale notice as contained in Annexure-7. He further conceded that the petitioner has statutory remedy against the impugned sale notice in terms of Section 17 of the SARFAESI Act, which admittedly the petitioner has not resorted to. However, by referring to the averments made in the supplementary affidavit filed on behalf of the petitioner on 18.02.2015, it is contended that the petitioner has made an offer for compromise of the entire dispute. According to him, the modalities of compromise was arrived at between the petitioner and the respondent no. 3. Therefore, it is pleaded that on that ground alone, the impugned sale notice is fit to be set aside by this Court and the matter may be disposed of in terms of the compromise.

This matter was heard earlier by this Bench on 10.02.2015 and again on 19.02.2015. A counter-affidavit has been filed today on behalf of the Bank of Baroda disputing the claim raised on behalf of the petitioner. Learned counsel appearing on behalf of the respondents submits that after the stay order of the impugned sale notice passed by this Court on 02.12.2009, the petitioner did not make any payment towards outstanding dues. However, he has conceded that recently Rs. 80,000/- was paid by the petitioner through a cheque. According to him, the matter has not been compromised between the petitioner and the respondents and outstanding dues against the petitioner is yet to be calculated by the Bank. It is pleaded by the learned counsel for the respondents that the issues of facts raised on behalf of the petitioner can effectively be gone into by the Debts Recovery Tribunal under the provisions of Section 17 of the SARFAESI Act. He further states that the Debts Recovery Tribunal at Patna is functional and, therefore, the petitioner may be relegated to the Debts Recovery Tribunal with a liberty to raise all the issues of facts and law.

After having heard the parties and taking into consideration the submissions made on their behalf as also the materials placed by them, this Court is of the opinion that the petitioner has alternative and efficacious remedy under Section 17 of the SARFAESI Act. It is well settled that the issues of facts must be raised and decided by the statutory authorities at the first instance and only thereafter the orders passed by them can be examined and tested in exercise of power of judicial review under Article 226 of the Constitution of India.

For the reasons recorded above, this Court is not inclined to accede to the prayer made on behalf of the petitioner. The writ petition is accordingly dismissed, but with a liberty to the petitioner to avail of the statutory remedy under Section 17 of the SARFAESI Act. However, the petitioner shall be at liberty to enter into a compromise with the respondents after making payment of outstanding dues of the Bank. It is expected that if the outstanding dues of the Bank is paid by the petitioner, then she will be entitled to get the appropriate relief.

Interim order of stay passed on 02.12.2009 by a Bench of this Court is hereby vacated.

(Birendra Prasad Verma, J)

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