IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4215 of 2015

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Ajit Kumar Akela, Son of Sri Sidhi Nath Singh, resident of Village- Kharijama, Post-Chandhari, P.S.- Islampur, District-Nalanda, Proprietor-M/S Nikhil Pharma, Shop No. B/9, Ground Floor, Uday Palace, Govind Mitra Road, P.S.- Pirbahore, District- Patna

.... Petitioner

Versus

1. The Chairman, State Bank of India, Corporate Office, Mumbai
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna
3. The Deputy General Manager, Small and Medium Enterprise, City Credit Centre, 1st Floor, Patna Main Branch Building, West Gandhi Maidan, Patna
4. The Assistant General Manager, Small and Medium Enterprise, City Credit Centre, 1st Floor, Patna Main Branch Building, West Gandhi Maidan, Patna
5. The Authorized Officer, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, State Bank of India, 1st Floor, Patna Main Branch Building, West Gandhi Maidan, Patna
6. The Branch Manager, State Bank of India, Govind Mitra Road Branch, Patna
7. M/S Vision Fin Business Solution Pvt. Ltd. Camp, Stat Bank of India, Small and Medium Enterprise, City Credit Centre, 1st Floor, Patna Main Branch Building, West Gandhi Maidan, Patna

.... Respondents

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Appearance:

For the Petitioner : Mr. Prashant Sinha, Advocate
Mr. Kumar Gangesh Gunjan, Advocate

For the Respondents : Mr. Kaushlendra Kumar Sinha, Advocate
Mr. Anjani Kumar Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-08-2015

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs:-

(i) For issuance of writ in the nature of certiorari for

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quashing of possession notice dated 03.03.2015 (Annexure-6) issued by respondent No. 5 under Section 13 (4) of the SARFAESI Act as the petitioner has already deposited the entire dues of the Bank on 10.12.2015 itself and the Bank has also issued a no dues certificate regarding the same.

(ii) For issuance of writ in the nature of certiorari for quashing of letter No. 3672 dated 03.03.2015 (Annexure-7) whereby the respondent No. 7 has been appointed to take possession over the mortgaged properties of the petitioner.

(iii) For issuance of writ in the nature of certiorari for quashing of the possession notice published in daily newspaper "Prabhat Khabar" dated 08.03.2015 (Annexure-8).

(iv) For holding that the respondent authorities cannot take possession over the properties of the petitioner when the petitioner has already made payment of the entire dues of the Bank and the Bank has also issued a no dues certificate.

(v) For necessary direction to the respondent authorities to release the properties of the petitioner given on equitable mortgage against the loan account bearing No. 32772927846.

3. On a conjoint reading of the pleadings of the parties it transpires that a cash credit of Rs. 80,00,000/- was sanctioned by the State Bank of India, Govind Mitra Road, Patna and was availed by the petitioner. After partial repayment the cash credit was converted into Working Capital Demand Loan (W.C.D.L.) of Rs. 60,00,000/- against which some payments were made. Ultimately it appears that for non-payment of the dues by the petitioner the Bank claims to have taken steps for recovery of the remaining amount by requisitioning the services of Recovery Agent and proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act").

4. Learned counsel for the petitioner submits that for the first time he received a possession notice dated 04.02.2015 under Section 13 (4) of the Act for recovery of an amount of Rs. 24,15,393/- together with future interest with effect from 10.10.2014 and other costs and expenses till the date of payment. Pursuant thereto the petitioner made payment of Rs. 44,00,000/- to the Govind Mitra Road branch of the Bank on 10.02.2015 against which it was issued a no dues certificate. However, on approaching for release of the documents relating to the secured properties lying mortgaged in the Bank in its SMECCC branch, the Bank authorities

however, did not release the properties. The petitioner filed a representation before the Deputy General Manager on 12.02.2015 and subsequently even served a legal notice on 19.02.2014. It appears that instead of releasing the properties the Bank authorities issued another possession notice dated 03.03.2015 for recovery of the same amount of Rs. 24,15,393/- as before without having regard to the fact that the petitioner had already made payment of Rs. 44,00,000/-. A Recovery Agent was also appointed on 03.03.2015 itself and a newspaper publication also made on 08.03.2015 after taking possession of the mortgaged assets.

5. Learned counsel appearing for the respondent Bank fairly concedes that all actions for recovery pursuant to the notice dated 03.03.2015 issued under Section 13 (4) of the Act are no longer relevant and the matter on this account has not been pressed.

6. In that view of the matter and with consent of learned counsel for the respondent Bank, the prayers of the petitioner as contained in paragraph 1 (i) to 1 (iii) are allowed and the possession notice dated 03.03.2015 under Section 13 (4) of the Act and the action taken pursuant thereto by way of appointment of Recovery Agent and newspaper publication including the possession notice are hereby quashed.

7. As regards the remaining prayers, it would

appear that the Bank is claiming the amount of costs and expenses incurred by it towards appointment of Recovery Agent namely, M/s. Vision Fin Business Solution Pvt. Ltd. for an amount of Rs. 1,56,128/- raised in its bill dated 10.02.2015 for action taken on 09.02.2015 and 10.02.2015, as well as towards newspaper publication expenses bill dated 27.05.2014 for Rs. 60,217/- (against which the Bank has limited the amount to only Rs. 20,073/- in their counter affidavit) towards newspaper publication made on that date.

8. Learned counsel for the petitioner submits that such amounts are not recoverable from him. It is pointed out that the bill dated 10.02.2015 submitted by the Recovery Agent has been raised for the action of 09.02.2015 and 10.02.2015 whereas the petitioner himself had voluntarily made payment of Rs. 44,00,000/- to the Bank and there was, therefore, no occasion for any action on the part of the Recovery Agent to justify such cost being incurred.

9. Learned counsel for the Bank on the other hand submits that the payment made by the petitioner on 10.02.2015 was in fact not voluntarily, rather it was upon the persuasion of the Recovery Agent who had acted in terms of the possession notice dated 04.02.2015, receipt of which the petitioner has also not denied. As regards the bill dated 27.05.2014 for newspaper publication, the respondent Bank is

seeking to recover only Rs. 20,073/- in that behalf for such publication having been made on 27.05.2014, being much prior to the payment of Rs. 44,00,000/- made by the petitioner.

10. Having heard the parties at length and upon consideration of the materials on record, this Court is not persuaded to grant relief to the petitioner in respect of the prayers made at para 1 (iv) onwards which are rejected. Recovery of the amounts towards costs and expenses have been incurred by the respondent Bank in terms of the bills contained in Annexure-Q and Annexure-R to the supplementary counter affidavit and are related to the actions taken on or prior to the date of payment of Rs.44,00,000/- by the petitioner. The submission of the petitioner that such costs shall be deemed to have been included in the possession notice under Section 13 (4) of the Act dated 04.02.2015 cannot be accepted considering that the bill of the Recovery Agent shows the action taken was on dates subsequent to said notice dated 04.02.2015 and the petitioner has also not demonstrated that the cost of newspaper publication made on 27.05.2014 had in fact been added in the costs and expenses to form part of the amount of Rs.24,15,393/- sought to be recovered under the said notice dated 04.02.2015.

11. The writ petition is accordingly partly allowed

in the aforesaid terms.

12. It is made clear that in case the petitioner deposits an amount of Rs. 1,76,201/- being the amount claimed by the Bank by way of costs and expenses (Annexure-J to the supplementary counter affidavit), then the respondent Bank authorities shall return the documents relating to the mortgaged properties to the petitioner without any delay and in any event not later than within one week from the date when payment is made.

(Vikash Jain, J)

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