IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2349 of 2009

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Bishwanath Sah @ Biswa Nath Sah @ Biswa Nath Sah, son of late Shri Mangan Sah, resident of Mohallah- Prabhat Nagar near D.S. College, Katihar, P.S. & District- Katihar.

.... Petitioner/s

Versus

1. Union of India through the Secretary, Finance Department, Government of India, New Delhi.
2. Branch Manager, Allahabad Bank, (Government of India Undertaking), Head Office:- 2 Netaji Subhas Road, Kolkata-70001.
3. The Zonal Manager, Allahabad Bank, Zonal Office- Buddh-Marg, Patna-800001.
4. Chief Manager, Allahabad Bank, M.G. Road, Katihar Branch, Katihar.
5. Authorised Officer, Allahabad Bank, (Government of India Undertaking), Zonal Office, Buddh Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent No.1 : Mrs. Kanak Verma

For the Respondent No.2 to 5: Mr. Shailendra Kr. Jha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 26-02-2015

Heard the parties.

2. The matter at issue is the action of the Allahabad Bank and its functionaries under the provisions of Section 13 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short "SARFAESI Act").

3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of notice dated 27th May, 2008 (Annexure-1) issued under Section 13(2) of the SARFAESI Act with respect to the properties detailed in paragraph-1 of the writ petition. The petitioner has further challenged the validity of subsequent notice issued under section 13(4) of the SARFAESI Act, though it has been claimed that he is not in possession of the aforesaid notice, therefore, it is not being annexed.

4. Learned counsel appearing on behalf of the petitioner submits that the impugned notice dated 27th May 2008 was not served upon the petitioner. Therefore, the respondent Bank could not have proceeded further in terms of Section 13(4) of the SARFAESI Act. According to him, on that count alone, the subsequent action of the respondents is fit to be treated to be a nullity and should be quashed.

5. Learned counsel appearing on behalf of the respondent no. 2 to 5 has strongly opposed the prayer made on behalf of the petitioner by referring to the averments made in the counter affidavit filed on their behalf way back on 12th May, 2009. It is contended on behalf of the aforesaid respondents that the petitioner had taken a loan of Rs. 10 lacs on 09.11.2004, but failed to pay the monthly instalments, as a result thereof, the loan account of the petitioner was declared NPA on 306.2007. It is also pleaded that a demand notice under section 13(2) of the SARFAESI Act was issued on 18.09.2007 for realization of outstanding dues of Rs. 11, 86, 024/- as on 30.06.2007. However, on account of non-recovery of the outstanding loan amount, after expiry of statutory period of 60 days, a notice under Section 13(4) of the SARFAESI Act was issued on 03.03.2008 for taking possession of the secured property of the borrower. It is also the case of the aforesaid respondents that subsequently, the secured property of the borrower was put on auction sale and it was sold to one Nand Kishore Prasad for an amount Rs. 9 lacs and on deposit of the aforesaid sale price, sale certificate was issued to the purchaser on 24.01.2009. Learned counsel appearing on behalf of the aforesaid respondents has raised the question of maintainability of the present writ petition also on the ground that the petitioner has not exhausted his statutory alternative and efficacious remedy available to him under Section 17 of the SARFAESI Act. It is pleaded that for the reasons best known to the petitioner, he has not resorted to the alternative remedy and has directly come to this Court in the present proceeding filed under Article 226 of the Constitution of India, which is liable to be dismissed on that ground alone.

6. By way of reply, learned counsel appearing on behalf of the petitioner submits that, in fact, the petitioner wanted to pay the outstanding dues in instalments, but the Bank has stopped accepting the payment from August, 2011.

7. After having heard the parties and on consideration of the materials available on record, this Court finds that, indisputably, the petitioner has got an alternative and efficacious remedy under Section 17 of the SARFAESI Act against the action taken by the respondent Bank in terms of Section 13(4) of the SARFAESI Act. It is not in dispute that the property in question was sold to one Nand Kishore Prasad son of late Dukhi Mahto, resident of Mohalla-Binodpur, near Katihar High School, Katihar for a sum of Rs. 9 lacs and this fact was disclosed in paragraph-4 of the counter-affidavit filed on behalf of the respondent Bank way back on 2nd May, 2009. Since then more than five years have already elapsed, yet the petitioner has not taken any step for impleading the aforesaid purchaser Nand Kishore Prasad as a party respondent. In view of the purchase of the secured property by aforesaid Nand Kishore Prasad, he has acquired a legal right with respect to the property in question and the issue raised on behalf of the petitioner in the present proceeding cannot be gone into without giving an opportunity of hearing to the aforesaid purchaser. Apparently, the present writ petition suffers from non-jointer of necessary party. This Court is further of the opinion that the issues of facts must be raised and gone into at the first instance by the statutory authorities under a particular statute and only thereafter power of judicial review under Article 226 of the Constitution of India can be effectively and properly exercised. In the present case the issues of facts raised on behalf of the parties are required to be conclusively decided by the statutory authorities.

8. In above view of the matter, this Court is not inclined to accede to the prayer made on behalf of the petitioner in the present writ petition. The writ petition is, accordingly, dismissed.

9. However, the petitioner shall be at liberty to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act for grant of appropriate relief, if all the necessary parties including the purchaser, referred to above, are impleaded as party respondents. If the petitioner is advised to invoke the provisions of Section 17 of the SARFAESI Act, then the same shall be considered on its own merit without being prejudiced or influenced by any observations or findings recording in the present order. The order of status quo passed on 22.02.2009 by a Bench of this Court is hereby vacated. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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