IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.923 of 2015

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Baijnath Prasad Mehta @ Baijnath Prasad Mahto @ Baijnath Mahto, son of late Harkishun Mehta @ Harikishun Mahto @ Harikrishna Mahto, resident of Mohalla Bari Nagla, Patna City, P.S. Malsalsami, Dist. Patna.

.... Petitioner/s

Versus

1. The Authorized officer Cum Chief Manager, Corporation Bank at personal Banking Branch, Indra Bhawan, Boring Canal Road, Patna-1.
2. Corporation Bank through its Manager, Indira Bhawan, West Boring Canal Road, Patna-800001.
3. Branch Manager, Corporation Bank at Indra Bhawan, West Boring Canal Road, Patna-1.
4. M/s Ashirvad Hosiery, 95E, S.K. Puri Road No.3, Rajesh Path, Boring Road, Patna-800001.
5. Ashish Kumar, son of Vachaspati at 301 Vimla Apartment, Justice Narayan Path, Boring Road, Patna.
6. Ramesh Shukla, son of Chandeshwar Shukla, Begampur Patna City, P.S. Chowk, Dist. Patna 800009.
7. Debt Recovery Tribunal, Patna through its Recovery Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Adv.
Mr. Durga Narayan, Adv.

For the Respondent/s : Mr. Bal Bhushan Choudhary

For the Corporation Bank : Mr. M. Kishore, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

2 16-01-2015 Heard learned counsel for the parties as with regard to the following prayer made in this writ application:-

"1. That this is an application for issuance of appropriate, order or direction for setting aside the proclamation of sale dated 25/11/2014 as contained as (Annexure-8) issued under sign and signature of recovery officer in R.P. No. 260 of

> *2012 by which he has ordered to Auction the property mentioned schedule of property of. The order, during the pendency of Appeal No. 293/2014 before Debt Recover Appellate Tribunal, Allahabad against the order dated 27/8/2012 passed by DRT Patna in O.A. Case No. -85 of 2012 and order dated 20/10/2013 in M.A. No. 283 of 2013."*

Mr. Shiv Prakash Srivastava, learned counsel for the petitioner, has straightway proceeded to assail the impugned notice for sale fixing the date of 19.1.2016 as a date of auction on the ground that when the appeal of the petitioner against the order of the Debt Recovery Tribunal is pending before the Debt Recovery Appellate Tribunal, Allahabad, the Bank ought to have not gone for sale by way of auction of the property, in question, of the petitioner. In this regard, he has informed this Court that a date fixed for hearing the appeal before the Debt Recovery Appellate Tribunal, Allahabad is 10.2.2015.

Learned counsel for the Bank does not dispute any of these facts but, then, he has submitted that such date of auction has been fixed under the order of the Recovery Officer of Debt Recovery Tribunal and if the petitioner was aggrieved of such order, he had the remedy of appeal before the Presiding Officer of the Debt Recovery Tribunal.

Strictly speaking, the remedy of appeal against the main order of the Debt Recovery Tribunal is the subject matter before the Debt Recovery Appellate Tribunal, Allahabad. At this stage, if as per the order of the Debt Recovery Tribunal, the Recovery Officer has passed only a consequential order under which the Bank has gone for auction and the date of auction has been fixed on 19.1.2015, the petitioner cannot get any relief either from the Presiding Officer or from the Debt Recovery Tribunal for a simple reason that the Presiding Officer cannot stay his own order passed against which an appeal has been filed by the petitioner before the Debt Recovery Appellate Tribunal, Allahabad. Once the Presiding Officer of the Debt Recovery Tribunal, therefore, is himself not in a position to stay his own order, he cannot also ask the Recovery Officer not to give effect to his own order. The petitioner has been given the date of 10.2.2015 before the Debt Recovery Tribunal for hearing of his appeal.

In such circumstances, this Court would restrain the Bank from holding auction on 19.1.2015. This order of restrain, however, will continue only till 10.2.2015 on which day either the petitioner shall get extension of the interim protection being given by this Court or in the event, the appellate tribunal does pass any interim order, the Bank will be at liberty to fix any fresh date for auction even if the appeal remains pending.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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