**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.10332 of 2015**

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Shravan Kumar S/o Meghu Sao, Director of Shiv Sagar Rice Mill, Pvt. Ltd. Maniyanwan Road, Deepnagar, Nalanda.

.... .... Petitioner

Versus

1. The Presiding Officer, Debt Recovery Tribunal, Patna, District Patna.
2. The District Magistrate, Biharsharif, Nalanda, District Nalanda.
3. The Sub Divisional Magistrate, Biharsharif, at Naland, District Nalanda.
4. Chief Manager cum the Authorised Officer, Punjab National Bank, Branch Office Biharsharif, District Nalanda.
5. Chairman cum the Managing Director, Punjab National Bank, HO-5, Sansad Marg, New Delhi - 110001.

.... .... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Abhay Kumar Sinha
For the Respondent/s : Mr. M.K. SINGH- SC-6

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 09-09-2015**

Heard learned counsel for the petitioner and the Respondents.

2. The present petition has been filed for quashing the order dated 19.03.2015 passed by the District Magistrate, Nalanda for taking physical possession of the Rice Mill and Residential House of the petitioner, and for quashing the order dated 02.07.2015 passed by the Debts Recovery Tribunal, Patna in S.A. No. 19 of 2015, and for connected reliefs.

3. The short facts of the case are that the petitioner, Managing Director of Shiv Sagar Rice Mill Private Ltd. was granted a limit of Rs. 81.16 lacs initially by the respondent Bank

and later enhanced to Rs. 320.24 lacs by way of Term Loan, Cash Credit and FLC. In due course, defaults in repayments of the amounts by the petitioner led to proceedings under SARFAESI Act (for short, “the Act”) by issuance of notice under Section 13(2) thereunder and subsequently possession notice under Section 13(4) was also issued on 03.11.2014. Despite the same however the accounts were not settled by the petitioner and accordingly the respondent Bank approached the District Magistrate, Nalanda and the Superintendent of Police, Nalanda for assistance in the matter of taking possession of the mortgaged property but however the Bank was unable to take physical possession of the property.

4. The respondent Bank finally adverted to the provisions of Section 14 of the Act by sending a request letter dated 02.03.2015 to the District Magistrate, Nalanda for taking possession of the properties of the petitioner. Pursuant thereto, possession of the petitioner’s Rice Mill as well as Residential House was taken on 01.07.2015 by the Sub-Divisional Officer, Biharsharif under orders of the District Magistrate in terms of the latter’s letter No. 580/Vidhi dated 19.03.2015.

5. At the very outset, Mr. Chitranjan Sinha, learned Senior counsel appearing for the petitioner confines his challenge to the order of the District Magistrate dated 19.03.2015, submitting that the same is wholly illegal and without jurisdiction.

He refers to the first proviso of Section 14 of the Act inserted with effect from 15.01.2013 to submit that any application by the Bank was required to be accompanied by an affidavit with a declaration containing several statements and particulars enumerated in the said proviso, and the requirement of such affidavit is of a mandatory nature. The second proviso contemplates that upon receipt of the affidavit from the Bank, the District Magistrate must satisfy himself of the contents of the affidavit and only thereafter pass suitable orders for taking possession of the property. It is therefore submitted that in the absence of such affidavit having accompanied the Bank's request letter dated 02.03.2015 to the District Magistrate, the latter could not have arrived at the requisite satisfaction for acting under Section 14 of the Act thereby rendering the entire action taken for possession of the petitioner's properties as illegal and void *ab initio*.

6. Learned counsel for the respondents, Mr. Kumar Priya Ranjan, on the other hand vehemently opposes the stand of the petitioner, pointing out that the petitioner never filed any Appeal under Section 17 before the Debts Recovery Tribunal against the notice under Section 13(4) of the Act and hence the petitioner cannot now be heard to object to possession having been taken by the District Magistrate. It is further submitted that despite repeated opportunities, the petitioner has not come

forward to settle the outstanding amount which he ought to have done.

7. Having heard the parties at length and on consideration of the materials on record, this Court is of the view that the challenge to the validity of the action of the District Magistrate taking possession of the petitioner's properties must succeed. It has not been disputed by the respondents that the provisions of Section 14 contemplate that an affidavit must accompany the request by the secured creditor which has not been complied with. The proviso to Section 14 SARFAESI Act was inserted on 15.01.2013 and thus became applicable in respect of the Bank's request letter dated 02.03.2015 sent to the District Magistrate. A perusal of the provisions of Section 14 makes it clear that the requirement of such affidavit accompanying the request is of mandatory nature as it requires disclosure of material facts and particulars relating to the relevant transaction and it is only after applying his mind to these aspects of the matter that the District Magistrate is required to arrive at his satisfaction before passing suitable orders for purposes of taking possession of the secured assets. In absence of the affidavit accompanying the request letter dated 02.03.2015 written by the Bank to the District Magistrate, it must be held that all consequential actions are rendered illegal and without the authority of law.

8. In the result, the writ petition is allowed to the above extent and the order of the District Magistrate as contained in Letter No. 580/Vidhi dated 19.03.2015 (Annexure-8) is hereby set aside with all consequential reliefs to the petitioner. The respondents shall forthwith restore physical possession of the Rice Mill and the Residential House in question to the petitioner. It is however made clear that the respondents shall be at liberty to proceed in the matter in accordance with law, if so advised.

**(Vikash Jain, J)**

Md. Ibrarul/-

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