IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.753 of 2015

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Inderdeo Prasad S/O Mundey Ram, Proprietor of Inderdeo Textile, Resident of Mohalla Patwo Toli, Police Station-Manpur, District Gaya.

.... Petitioner/s

Versus

1.The State of Bihar.
2.The Principal Secretary, Industry Department, Government of Bihar, Patna.
3.State Bank of India through Regional Manager Regional Business Office, Main Branch, Gaya.
4.The Regional Manager, State Bank of India, Regional Office, Gaya.
5.The Authorised Officer, State Bank of India, Regional Business office, Gaya.
6.The Branch Manager, State Bank of India, Purani Godown Branch, Gaya.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Nirmal Kumar, Adv
For the Respondent/s : Mr. Geeta Kumari, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 16-01-2015 Heard learned counsel for the parties.

Having regard to the following prayer made in this writ application:-

> *"That this is an application for issuance of a writ in the nature of certiorari to quash the notice dated 19.12.14 for auction of the property which was mortgaged by the petitioner against the loan sanction by the Respondent Bank and for issuance of writ of mandamus directing the Respondents not to take any coercive step and also not auction of the landed property of the petitioner and further directed to Respondents to settle the claim of the petitioner under the Banker Compromise Settlement Scheme under the Reserve Bank of India which is enforced to all the Nationalised Bank including the State Bank of India and the petitioner is ready to pay the as per the loan amount when the Cash Credit Account of the petitioner was converted in Term Loan Account without any prior information to the petitioner when it is the mandatory provision by the Bank that before converting into Term*

> *Loan Account the Respondent Bank will informed to the cash credit Account holder or any other appropriate writ or writs which the petitioner is entitled and directed to Respondent Bank not to interfere regarding the mortgaged land property of the petitioner save and accept in accordance with law."*

this Court is not inclined to interfere with the auction notice dated 19.12.2014, for two reasons. Firstly, against such auction notice of a proceeding under SARFAESI Act, the petitioner has statutory alternative remedy before the Debt Recovery Tribunal. Secondly, this writ application has been filed on 12.01.2015, questioning the auction notice dated 19.12.2014, at the last minute and therefore this Court cannot pass any interim order for stay of the auction proposed to be held on 21.01.2015.

In such a situation, when learned counsel for the petitioner has himself submitted that the petitioner is prepared to pay 50 per cent of the amount of balance outstanding before the date of auction and the rest of the 50 percent amount in two equal monthly installments provided the petitioner is given correct calculation of the balance outstanding by the authorities of the State Bank of India after adjusting the amount already paid by the petitioner this Court with the consent of learned counsel of the Bank would entertain this writ application by way one time exception only with a view to do complete justice between the parties.

That being so, this court would direct that the offer of the petitioner should be considered by the authorities of the State Bank of India because if the petitioner himself is ready to pay the entire amount of loan in the manner indicated above i.e., 50 per cent of the balance outstanding on or before 20.01.2015, and the rest of the amount in two equal monthly installments payable by 20.02.2015 and 20.03.2015, the competent authority of State Bank of India having realized 50% of the dues from the petitioner shall stay the auction notice but only after obtaining written undertaking to pay amount of 50 per cent of the balance outstanding in two equal monthly instalments on or before 20.02.2015 and

20.03.2015 respectively.

Thus, this writ application is disposed of with a direction to the respondent authorities of the State Bank of India including Respondent no. 6, the Branch Manager, State Bank of India, Purani Godown Branch, Gaya to intimate the balance outstanding against the petitioner in respect of his loan for whose realization auction is going to be held on 21.01.2015. If the petitioner therefore would himself approach the Branch Manager of State Bank of India, Purani Godown Branch, Gaya tomorrow i.e., 17.01.2015, he shall be immediately informed of the amount of balance outstanding in writing whereafter, he must deposit its 50 per cent amount on or before 20.01.2015 and if he does so the proposed auction shall be postponed but if he fails to do such auction shall be held on 21.01.2015.

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

It is made also clear that if the petitioner having deposited 50% of balance outstanding fails to deposit either of the two equal monthly instalments on or before 20.02.2015 and 20.03.2015, the Bank shall be at liberty to take steps to hold auction for realization of its dues amount.

(Mihir Kumar Jha, J)

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