

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23776 of 2013

=====

Ashok Kumar S/O Shyam Narayan Singh Resident Of Village - Rasalpur,
Post Office And P.S. - Fatwah, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Govt. Of Bihar, Patna
2. The Chief Manager, Atressed Ascets Management Branch Second Floor, S.B.I. Patna Main Branch Building, West Of Gandhi Maidan, Patna - 800001
3. The Chief Manager, S.B.I. Tanawgrasat Aasti Management Branch Patna, 5th Floor, Circle Office Building Judges Court Road, Patna - 800001
4. The Manager , S.B.I Branch Supaul, District - Supaul, Bihar
5. The Cheif Registrar, Birth And Death, Fatwah, Patna
6. The Director, M/S Ramayan Cold Storage Private Ltd. Basaha Supaul, District - Supaul

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bishwa Bijay Kumar, Adv.
For the SBI : Mr. Kaushlendra Kumar Sinha, Adv.
For the State : Mr. Sunil Kr. Mandal, SC-24
Mr. Bipin Kr., AC to SC-24

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 16-01-2015

Heard learned counsel for the parties.

The prayer in the original writ application when it was
filed on 28.11.2013 had read as follows:-

- "1(i) *For issuance of appropriate writ/writs directing to respondents no.2, 3 and 4 to stop the proceeding for auction which is going to be held on dated 4.12.2013 against the notice dated 3.11.2013 published in Daily Newspaper namely Danik Jagran, on basis of fake guarantor loan has been financed by S.B.I. Supaul Branch District Supaul in favour of private respondent no.-6, M/s Ramayan Cold Storage Pvt. Ltd. Basaha, Supaul.*
- (ii) *For issuance of writ of certiorari to quash/set aside*

the notice dated 3.11.13 because the mother of petitioner namely Late Binda Devi died on 20.8.2002 who has been made guarantor, on basis of fake deed prepared in year 2005 and on the basis of said deed loan has been financed in favour of M/s Ramayan Cold Storage Pvt. Ltd. Basaha, Supaul, by the S.B.I. Supaul Branch in year 2005.

- (iii) *For issuance of direction/s to the Bank respondents to liquidate the standing amount from the director of M/s Ramayan Cold storage Pvt. Ltd., Supaul as well as for direction the aforesaid Bank Respondents not to torture the legal heirs of the late Guarantor who has been made after her death fabricably planted."*

The case, however, was not taken up till today.

Yesterday, infact this case was mentioned on the ground that the property of the petitioner is going to be auction sold on 20.1.2015 and for that purpose I.A. No. 364 of 2015 had been filed by the petitioner.

From reading of the aforesaid I.A. petition, it transpires that the petitioner has sought following relief:-

- "1 *That, this Interlocutory application is being filed with a prayer to add Mr. Kumar Pranav recovery officer, of the Debt Recovery Tribunal, Patna as one of the respondents no.-7, is a necessary party to this case, for the reasons stated in this application with a further prayer to stay the operation further proceeding of R.P. No. 73/14 till disposal of the main writ application."*

It would thus become clear that this Court was not



informed about the Recovery Proceeding No. 73 of 2014 till yesterday though from reading of the notice of the recovery proceeding, it would transpire that the notices were issued by the Debt Recovery Tribunal (D.R.T.) to the petitioner and others way back on 3.4.2014. Learned counsel for the petitioner also submits that pursuant to the aforesaid notice, the petitioner had appeared before the Debt Recovery Tribunal and has been contesting the matter in the pending R.P. Case No. 73 of 2014 but the Presiding Officer of the Debt Recovery Tribunal has not passed any order and yet he has surreptitiously gone to fix the date for auction on 20.1.2015.

Mr. Kaushlendra Kumar Sinha, learned counsel for the State Bank of India has submitted that all this story of the petitioner will not inspire confidence much less can be acted upon by this Court because the petitioner has never assailed the pending proceeding of R.P. Case No. 73 of 2014 before D.R.T. in this writ petition. He has also submitted that there cannot be any proceeding before the Debt Recovery Tribunal even without recording the order-sheet by its Presiding Officer and/or Recovery Officer.

In the considered opinion of this Court, the petitioner has come out before this Court with his case in a halfhearted



manner and that too even without exhausting the statutory alternative remedy. If the petitioner was in any way aggrieved of the proposed auction sale allegedly fixed on 20.1.2015, he ought to firstly approached the Debt Recovery Tribunal or Debt Recovery Appellate Tribunal. In fact, when the petitioner has not even enclosed any order passed by the Debt Recovery Tribunal after issuance of the notice on 3.4.2014, this Court will have no difficulty in holding that the petitioner has simply tried to create a ghost of auction on 20.1.2015 inasmuch as no proclamation order of sale or the notice of such sale has been brought on record by the petitioner even in the interlocutory application.

Be that as it may, now when this becomes very clear to this Court that the petitioner is apprehensive of the proposed auction sale allegedly going to be held on 20.1.2015, it can only give liberty to the petitioner to approach the Presiding Officer and/or Recovery Officer for staying the proposed auction fixed for 20.01.2015 by explaining that since no final order has been passed in the R.P. Case No. 73 of 2014, the proposed action of auction sale of the property on 20.01.2015 will be wholly premature.

It is however made clear that if a final order in R.P. Case No. 73 of 2014 has already been passed and auction sale is going to be held only in furtherance to carrying out the order of

the Debt Recovery Tribunal, the petitioner's application for staying the auction shall be automatically rejected.

With the aforementioned observation and direction, the interlocutory application as well as the main writ application is disposed of.

(Mihir Kumar Jha, J)

Rishi/-

U			
---	--	--	--