IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12566 of 2015

==

1. Smt. Sandhya Singh wife of Uma Shankar Singh
2. Uma Shankar Singh son of Late Baidyanath Singh

Both resident of village- P.O. Bilandpur, P.S. Mahua, Dist- Vaishali, at present Shaktinagar Sachipatti, P.O. Hajipur, District- Vaishali

.... Petitioners

Versus

1. The Chief Branch Manager, Central Bank of India, Main Branch, Hajipur, Vaishali
2. The Assistant Branch Manager, Central Bank of India, Main Branch, Hajipur, Vaishali

.... Respondents

==

Appearance :

For the Petitioners : Mr. Sunil Kumar,
Mr. Binay Kumar Singh, Advocates

For the Respondents: Mr. Mahendra Pathak, Advocate

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-09-2015

The present writ petition has been filed for a direction to the respondent-Bank to make correction in calculating the interest which has wrongly been calculated at the rate of 10.75% per annum instead of 9.5% fixed per annum and to consider and dispose of the petitioners' objection/representation to enable them to make repayment of the loan amount after correction of the calculation.

2. It is submitted on behalf of the petitioners that loan under the Housing Finance Scheme for Rs.4,50,000/- was sanctioned in favour of the petitioners by the respondent Bank on 06.03.2007 on fixed rate of interest i.e. 9.5% per annum in respect of which mortgage of land situated at Hajipur was created. It is stated that the

Bank has erroneously charged interest @ 10.75% per annum instead of 9.5% per annum which was originally fixed. Pursuant to the notice issued 23.11.2011 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), the petitioner filed a representation as contemplated under Section 13(3-A) of the SARFAESI Act on 17.01.2012 raising the aforesaid objection (Annexure-4) but without disposal of the same, the respondent-Bank is proceeding for recovery. It is therefore stated that the auction sale of the mortgaged property fixed on 23.09.2015 is wholly arbitrary and illegal. The petitioners express their readiness to make repayment of the outstanding amount found due upon correct calculation applying the contracted rate of 9.5% per annum.

3. Learned counsel for the respondent-Bank has filed a counter affidavit accepting that the rate of interest was increased from 9.5% per annum to 10.75% per annum on 02.03.2012 but however an amount of Rs.10,000/- had been credited to the petitioners' account.

4. The provisions of Section 13(3-A) of the SARFAESI Act contemplate that if the borrower files a representation or raises an objection, the secured creditor must communicate the reasons for non-acceptance of the representation or objection to the borrower within 15 days. The counter affidavit does not specifically state that the said

amount of Rs.10,000/- has been credited to the petitioners' account by way of refund of the excess interest charged by them. The relevant dates are required to be reconciled, considering that the representation of the petitioners has been made on 17.01.2012 whereas the Bank claims to have charged the increased rate of interest on 02.03.2012 but also claims to have credited Rs.10,000/- to the petitioners' account at the time of representation filed by the petitioners, which, as stated above, was earlier in point of time, namely, 17.01.2012.

5. Having regard to the facts and circumstances of the case and in the interest of justice, this Court directs the Respondent-Bank to dispose of the petitioners' representation dated 17.01.2012 by a reasoned order and communicate the same to them within a period of 15 days from the date of receipt/production of a copy of this judgment. This Court further directs that until disposal of such representation, further proceeding for recovery of the dues including by way of proposed action shall remain stayed.

6. The writ petition is allowed to the above extent.

(Vikash Jain, J)

B.T/-

U			