

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16323 of 2008

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Smt.Sona Devi wife of Kishori Mistry resident east of Ashok Nagar,
Kankarbagh, P.O. & P.S. Kankarbagh, District Patna.

.... Petitioner/s

Versus

1.Zonal Manager,Allahabad Bank, Zonal Officer, Budha Marg, Patna-800001.

2.Authorised Officer, Allahabad Bank, Service Branch, Osha's Mansion, Frazer Road, Patna-800001.

3.Senior Branch Manager, Allahabad Bank, Rajendra Nagar Branch, Rajendra Nagar, Patna-800006.

4.Sharma Engineering Works, Prop Kishori Sharma, s/o Udit Sharma, Near Rajendra nagar Over Bridge, Patna.

Borrower.... Respondent/s

5.Mihir Chand Sharma, s/o Janak Mistry, Kankarbagh Road, Patna.

6.Bina Devi resident of Kamalpur Singhia Bidupur Bazar, Vaishali.

.....Guarantor/Respondents

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

7 23-01-2015 Heard learned counsel for the parties as with regard to the following reliefs prayed in this writ application:-

"For quashing of notice of auction dated 28th August 2008 as well as the notice of possession dated 16.05.2008 only on the ground that securitization and Reconstruction of Financial Assets and enforcement of security interest Act 2002 is not applicable to the Loan taken by the Borrower Sharma Engineering Works."

2. This Court on perusal of the pleadings and submissions learned counsel for the parties would find

that there are some pure questions of fact which would require its determination, namely :-

(i) Whether the petitioner was prejudiced on account of wrong notice given of the date of auction even when a correct notice of the auction was published in the newspaper.

(ii) Whether the auction purchaser had fulfilled the terms and conditions of the auction including down payment of 25 per cent on the date of auction.

(iii) Whether the petitioner was in any way prejudiced on account of non-observance of the provisions of Rules-8 and 9 of the SARFAESI Act envisaging a proper valuation followed by proper notice given to the loanee before taking coercive action of putting the property on auction sale?

3. Admittedly, at the end of the day, it is only proposed auction under Section-13(4) of the SARFAESI Act which is only being questioned in this

writ application.

4. Thus taking all these aspects into consideration and the provisions of statutory remedy under Section-17(4) of the SARFAESI Act, this Court would dispose of this writ application with a liberty to the petitioner to file such appeal against the impugned order within a period of 30 days from today, and if it is done so the Debt Recovery Tribunal shall entertain and decide such appeal without non suiting the petitioner on the ground of delay/limitation, if any by taking into account that this writ application was filed on 11.11.2008 and had remained pending till today.

5. Keeping in view that this writ application has remained pending for a period over six years and there is an interim order of this Court dated 08.12.2008 for maintaining status quo, such order of status quo will continue till the date of filing and first hearing of the application filed by the petitioner by the Debt Recovery Tribunal. It would be thereafter for the Tribunal to pass

any further interim order as may be found necessary in the facts and circumstances of the case.

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

(Mihir Kumar Jha, J)

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