IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18157 of 2010

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Ashok Kumar S/O Late Shadeo Sao R/O Vill.- Rohua Appuch, P.S.- Mushari, Distt.- Munger .... Petitioner/s

Versus

1. The State of Bihar through the Collector, Muzaffarpur
2. Punjab National Bank through its Regional Manager, Muzaffarpur
3. Branch Manager, Punjab National Bank, Pankaj Market Branch, Muzaffarpur
4. Shambhu Prasad Gupta S/O Late Shadeo Sha R/O Vill.- Rahua Appuch, P.S.- Mushari, Distt.- Muzaffarpur .... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md.Waliur Rahman, Advocate
Mr.Nishant Kumar Sinha, Advocate

For the Respondent Nos. 2 & 3 : Mr.Mahesh Narayan Parbat, Sr.Advocate
Mr.Ved Prakash Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL ORDER

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4 17-04-2015 Heard the parties.

2. The matter at issue is the action taken by the respondent Punjab National Bank under Section 13(4) of the The Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act").

3. The petitioner, being the full brother of the respondent no.4 who is borrower of Punjab National Bank, has filed the present writ petition under Article 226 of the Constitution of India questioning the validity and correctness of the sale notice dated 26.07.2010 (Annexure-4 to the writ petition), whereby the respondent Bank after taking possession over the secured assets, has put it on auction sale.

4. Learned counsel appearing on behalf of the petitioner submits that secured assets is a joint family property and the respondent no.4 had taken loan from the respondent Bank by putting the joint family properties as secured assets, but the petitioner is not a party to such deed. According to him, once the petitioner came to know about the issuance of impugned sale notice, he has approached this Court in the present proceeding filed under Article 226 of the Constitution of India.

5. Learned senior counsel appearing on behalf of the respondent Punjab National Bank and its functionaries, at the very outset, has raised the question of maintainability of the present writ petition at this stage on the ground of availability of alternative statutory remedy to the petitioner under Section 17(1) of the SARFAESI Act. According to him, even if the petitioner was not a party for the purpose of taking loan from the respondent Punjab National Bank and if his right has been infringed by the impugned action, then he is required to approach the Debts Recovery Tribunal under Section 17(1) of the SARFAESI Act for grant of appropriate relief. According to him, entertainment of the writ petition and grant of any relief to the petitioner at this stage would be contrary to the scheme, scope and object of the SARFAESI Act.

6. After having heard the parties, this Court is of the opinion that in view of the scheme and object of the SARFAESI Act, the relief sought for on behalf of the petitioner cannot be granted in the present proceeding unless and until he exhausts the statutory remedies available to him under the SARFAESI Act. The issues raised herein are no longer a res integra. The Hon'ble Apex Court in the case *of* ***United Bank of India Vs. Satyawati Tondon [(2010) 8 SCC 110]*** has considered the scheme and scope of the Section 17 (1) of the SARFAESI Act in paragraph 42 of the said judgment. In paragraph 43 of the said judgment, it has further been held that "High Court must insist that before availing the remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statutes." In paragraph 55 of the said judgment, entertainment of the writ petitions by the different High Courts at the initial stage with respect to the SARFAESI Act or with respect to The Recovery of Debts Due to Banks & Financial Institutions, Act, 1993 have been deprecated.

7. In view of the law laid down by the Hon'ble Apex Court, as referred to above, the objection raised by learned senior counsel appearing on behalf of the respondent Bank is sustained and the writ petition is held to be not maintainable at this stage.

8. However, the petitioner, if so advised, may approach the Debts Recovery Tribunal, Patna in term of Section 17(1) of the SARFAESI Act for grant of appropriate relief. If such an application/appeal is filed by the petitioner before the learned Debts Recovery Tribunal, Patna within a period of five weeks from today with a certified copy of the present order, then the same shall be considered and decided on its own merit without being prejudiced or influenced by rejection of the present writ petition. It is further clarified that since the petitioner has approached this Court in the present proceeding on a bona fide legal advice, therefore, the application/appeal filed by the petitioner within the aforesaid time prescribed shall not be dismissed on the ground of limitation and it shall be considered on its own merit.

9. The writ petition stands finally disposed of with the observations and directions made above. The interim order of stay passed by a Bench of this Court by order dated 19.11.2010 is hereby vacated.

(Birendra Prasad Verma, J)

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