IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1581 of 2015

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Vijay Kumar Bairoliya son of late Ram Prasad Bairoliya, resident of Mohalla Lalbagh, Police Station Sadar (Town), District Darbhanga,

.... Petitioner

Versus

1. The Punjab National Bank through its Chairman,
2. The Zonal Manager, Punjab National Bank Zonal Office, Chanakya Tower, R-Block, Patna-800 001,
3. The authorised Office-cum-Branch Manager, Punjab National Bank, Tower Chowk Branch, Darbhanga-846004,

.... Respondents

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Appearance :
For the Petitioner : Mr. Sanjeev Sanjan, Advocate
For the Respondents : Mr. Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 12-02-2015

I have heard learned counsel for the petitioner and the respondent-Bank.

Petitioner seeks quashing of the notice dated 26.12.2014 informing him that if he does not deliver the possession of the secured asset detailed in the same under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(hereinafter to be referred to as “the Act”), then the Chief Manager (Authorised Officer), Punjab National Bank, Secured Creditor will take possession of the aforesaid secured asset on or after 27.01.2015 at any time between 10.00 hours to 17.00 hours. `

Learned counsel for the petitioner submits that the possession cannot be taken without following Rule 8(1) and affixing a notice as provided at Appendix IV of the Security Interest (Enforcement) Rules, 2002 (hereinafter to be referred to as 'the Rules"). However, it is also contended that in case of resistance, the secured creditor has to take recourse of section 14 of the Act.

Per contra, learned counsel for the respondent-Bank submits that now for any action under section 13(4) of the Act the remedy for the borrower would be Debt Recovery Tribunal and not by invoking the powers of this Court under Article 226 of the Constitution of India. He places reliance upon a decision of a Division Bench of this Court rendered in ***L.P.A. No. 1235 of 2013 (Rakesh Kumar v. Anant Kumar Jain and others)*** and its analogous cases.

However, admittedly, such possession was not taken on the date fixed vide Annexure 3. In fact, Annexure 3 was given to the petitioner either to pay the dues or face take over/possession of the concerned asset by the creditor. So far Rule 8(1) of the Rules is concerned, the conjoint reading of the aforesaid Rule along with Appendix IV reveals that such exercise of affixing notice is to be done at the time of taking possession and not prior to that. So far issue of compliance of the provision of Section 14 of the Act is concerned, this is also not required to be decided at this stage as neither any resistance has been made by the petitioner during take over of assets nor has there been any violation of section 14 of the Act by the secured creditor till date.

In above view of the matter, this application is dismissed.

However, it goes without saying that the secured creditor would be at liberty to act in accordance with law.

(Dr. Ravi Ranjan, J)

SC/-

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