

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10441 of 2015

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1. M/s Shakti Sudha Industries through its Proprietor Satyajeet Kumar Singh at C/23, and C/24 Industrial Area Patliputra, PO & PS.- Patliputra District- Patna.
 2. Satyajit kumar Singh son of Shri Ranjeet Kumar Singh, resident Apartment, Vivekanand Marg (Boring Road), P.S. Sk. Puri District - Patna

.... Petitioner/s

Versus

1. The Chairman, Bank of India, Star House, C-5, G Block, Bandra Kurla Complex, Bandra(East) Mumbai.
2. The General Manager, Bank of India, Star House, Gomati Nagar, Vibhuti Khand, Lucknow,
3. The Zonal Manager, Bank of India, Patna Zone, Zonal Office, Chankya Place, patna.
4. The Chief Manager Bank of India, B.C.P. Marg, Branch, Sone Bhawan ,R. Block Patna.
5. The Authorised Officer, Bank of India, Zonal Office, Chankya Place, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sanjay Singh, Advocate
Mr. Praveen Kumar, Advocate
For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate
Mr. Sanjay Singh Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 01-10-2015 Heard Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioners and Mr. Sanjay Singh Thakur for the Bank.

Although a number of reliefs were prayed when this writ petition was filed and a further relief was added when a notice of E-Auction was issued, a copy of which is placed at Annexure- 23 to I.A. No. 7427 of 2015 but in the nature of the order that this



Court proposes to pass in consideration of the facts prevailing today, it would not require to go with the sequence of events resulting in the relief so prayed. Suffice it to say that a notice under Section 13(2) was issued against the petitioner under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and which was followed by a notice under Section 13(4) of the 'SARFAESI Act' on 02.2.2011, copies of which are placed at Annexure-3 and 5 respectively. The petitioner claims that he filed an objection under Section 13(3A) of the 'SARFAESI Act' but which remained pending with the Bank for disposal. It is the case of the petitioner that being under the impression that the objection so raised to the notice issued by the Bank under Section 13(2) of the 'SARFAESI Act' is in consideration of the Bank as well that a prayer for restructuring of the loan was pending with bank besides an application for One Time Settlement, that the petitioner awaiting their disposal moved this Court through the present writ petition and while the contest remained pending that the order of E-Auction has been issued impugned at Annexure-23 to I.A. No. 7427 of 2015.

Mr. Sanjay Singh while canvassing the case of the petitioner and complaining that it was the statutory duty of the



Bank under Section 13(3A) of the 'SARFAESI Act' to dispose of the objection, submits that apart therefrom, even a prayer for restructuring as well as a prayer seeking one time settlement, has also been made by the petitioner but without disposing of the applications so filed, the Bank has gone ahead with E-Auction thus prejudicing the case of the petitioner.

A threefold relief thus is prayed by the petitioner, namely:(a) For disposal of the objection filed under Section 13(3A) of the 'SARFAESI Act'; (b) For disposal of the prayer for restructuring of the Loan; and (c) For disposal of the application for one time settlement, all of which are pending with the Bank.

Per contra, it is the contention of Mr. Sanjay Singh Thakur, learned counsel appearing for the Bank that in consideration of the stage of the proceedings where a possession notice under Section 13(4) of the 'SARFAESI Act' was issued on 02.2.2011 and which is followed by the E-Auction notice which is to take place on 15.10.2015, no such indulgence could be granted to the petitioner at this stage and the remedy for the petitioner would lie under Section 17 of the 'SARFAESI Act'. Learned counsel has relied upon a judgment of the Supreme Court rendered in the case of **United Bank of India vs. Satyawati Tandon reported in (2010)8 SCC 110** to support his contention and which



is contested by Mr. Singh relying upon a Bench decision of this Court reported in **2012(4) PLJR 748 (M/s Tirupati Storage & Allied Pvt. Ltd. vs. United Commercial Bank)** to submit that the judgment of the Apex Court has been considered by the Bench and it has been held that no such objection under Section 17 can be taken by the Bank if they have failed to dispose of the objection filed by the loanee under Section 13(3A) of the 'SARFAESI Act'.

I have heard learned counsel for the parties and I have perused the records. The fact remains that whereas the notice under Section 13(2) of the 'SARFAESI Act' was issued on 18.6.2010 and though an objection is claimed to have been filed by the petitioner on 25.11.2010 but the said exercise is followed by the issuance of a possession notice under Section 13(4) of the 'SARFAESI Act' on 02.2.2011 and which possession notice was not questioned by the petitioner before any forum earlier rather it is for the first time that the petitioner questions it before this Court after more than four years. The situation thus as it stands presently is that the possession notice has also been issued under Section 13(4) of the 'SARFAESI Act' and which is followed by the E-Auction notice which is to take place on 15th October, 2015 meaning thereby the stage has crossed for disposal of the objection so filed by the petitioner. Nonetheless the remedy is yet available

to him under Section 17 of the 'SARFAESI Act' and he can well avail thereof.

Mr. Singh learned counsel for the petitioner submits that since the E-Auction is to take place on 15.10.2015 hence the time is too short for him to approach the Tribunal and seek an interim relief within this period. According to learned counsel it is not only the filing of the case but it is to be listed and heard after service on the Bank and which would consume time. On the issue of urgency, it was fairly stated by Mr. Thakur, learned counsel for the Bank that since he is the counsel for the Bank before the Tribunal as well, hence he would cooperate in the expeditious hearing of the matter.

Mr. Sanjay Singh submits that the petitioner would be filing the application under Section 17 before the Tribunal in the next week along with a prayer for grant of interim relief and since the E-Auction would be taking place on 15.10.2015 hence appropriate direction may be issued for its expeditious hearing. Mr. Thakur raised no objection to such prayer.

Since the contesting parties as represented through their respective counsel are agreeable to a priority hearing of the matter on the issue of interim relief hence as undertaken by Mr. Singh, let the application under Section 17 of the 'SARFAESI Act' be filed



along with a prayer for interim relief early next week by the petitioner with service thereof on Mr. Sanjay Singh Thakur learned counsel representing the Bank and in which circumstance there would be no issue of any fresh service of notice. The application so filed on behalf of the petitioner under Section 17 of the 'SARFAESI Act' would be considered on the issue of grant of interim relief by the Tribunal on a preferential basis and considering that the E-Auction is to take place on 15.10.2015 hence the learned Tribunal would be well advised to consider the prayer for grant of interim relief made on behalf of the petitioner on 08.10.2015 and dispose of the same in accordance with law after hearing the contesting parties.

Since this order has been passed in the presence of learned counsel representing the contesting parties hence it is sufficient notice to the parties and who would be bound to ensure their presence on the 08.10.2015 when the matter would be considered by the Tribunal on the issue of interim relief.

The writ petition and the interlocutory application are accordingly disposed of.

(Jyoti Saran, J)

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