IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9184 of 2016

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Prem Lata Singh alias Prem Lata Devi wife of Late Manoranjan Prasad, resident of village Jafarabad, P.O. & P.S. Fatuha, District Patna

.... Petitioner/s

Versus

1. The State Bank of India through its Chairman-cum-Managing Director, Madam Cama Road, Mumbai
2. The Assistant General Manager, State Bank of India, Stressed Assets Resolution Branch, Patna Branch Building, Patna
3. The Authorised Officer, State Bank of India, Retail Assets Central Processing Centre (RACPC), First Floor, Patna Head Branch Building, West Gandhi Maidan, Patna -1
4. The Branch Manager, State Bank of India, Daniawan Branch, District Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajendra Narain, Sr. Advocate
Mr. Bhola Kumar, Advocate

For the Respondent/s : Mr. Satya Prakash Tripathy, Advocate
Mr.Suresh Kumar, Advocate
Mr. Satya Vrat, Advocate.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 02-06-2016

The learned senior counsel appearing on behalf of the petitioner seeks permission to make necessary corrections in the cause title of the writ petition giving correct description of all the respondents.

Permission is granted.

Necessary corrections must be carried out during the course of the day.

The petitioner, who is the widow of Late Manoranjan Prasad, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity, correctness and propriety of general auction notice dated 26.05.2016 issued by the respondent State Bank of India, Patna, as contained in Annexure-11, whereby and whereunder JCB machine purchased by the petitioner's husband after taking loan from the respondent State Bank of India, fully detailed at serial no. 12 of the Notice, has been put on auction sale on 05.06.2016.

It is not in dispute that the husband of the petitioner had taken a loan amount of Rs.16,25,400/- from Daniawan Branch of State Bank of India for purchasing a JCB machine, fully described in paragraph 5 of the writ petition, whereafter machine was purchased on 23.02.2013. It is also not in dispute that the husband of the petitioner unfortunately died on 28.03.2013. Therefore, the installments of the loan amount fixed by the Bank could not be paid by the petitioner within the time; as a result of which, the loan account of the petitioner was declared as Non-Performing Assets. It is further not in dispute that on account of non-payment of installments of loan amount, the respondent State Bank of India recovered the JCB machine from the petitioner on 04.08.2015 and thereafter it is lying with the Bank.

The learned senior counsel appearing on behalf of the petitioner submits that the respondent Bank earlier wanted to auction sale the JCB machine; therefore, the petitioner approached this Court in CWJC No. 12617 of 2015, which was finally disposed of by order dated 17.08.2015 (Annexure-6) by a Bench of this Court granting liberty to the petitioner to approach the respondent State Bank of India once again for redressal of her valid grievances. It is the case of the petitioner that in the light of the observations made by this Court, the petitioner filed her representation before the competent authority of the respondent State Bank of India, whereafter by order/communication dated 12.09.2015 (Annexure-8) the petitioner was directed to pay Rs.5,00,000/- as up-front amount and remaining balance loan amount was directed to be paid in eight equal monthly installment of Rs.93,903/- each. It is further submitted on behalf of the petitioner that in compliance of the aforesaid order/communication dated 12.09.2015 (Annexure-8) issued by the Branch Manager of Daniawan Branch of the respondent Bank, the petitioner could deposit only Rs.50,000/- on 27.11.2015, but the remaining amount could not be paid by the petitioner on account of serious ailment suffered by her and on account of the fact that the JCB machine is still under seizure with the respondent State Bank of India. In above view of the matter, by the impugned general auction notice dated 26.05.2016 (Annexure-11) the JCB machine in question has been put on auction sale for 05.06.2016.

When the matter has been taken up for consideration today, a supplementary affidavit has been filed on behalf of the petitioner, and in paragraph 2 it has been specifically stated that the petitioner is prepared to deposit Rs.2,00,000/- by 04.06.2016. She has further undertaken to deposit Rs.2,50,000/- by 20th June, 2016 and it is stated that she had already deposited Rs.50,000/- on 27.11.2015. It is contended by the learned senior counsel that by making the aforesaid deposits, the petitioner would be depositing the entire up-front amount fixed by the respondent Bank. It is next contended that in view of the bona fide stand taken by the petitioner, the interest of justice demands that the JCB machine in question may not be allowed to be put on auction sale and after deposit of the aforesaid up-front amount with the Bank by 20th June,2016, the JCB machine may be directed to be released in her favour, and thereafter the outstanding balance loan amount shall be paid by the petitioner on monthly installment fixed either by the Bank or by this Court.

The learned counsel appearing on behalf of the respondent Bank and its functionaries has strongly opposed the prayer and submitted that the petitioner is a habitual defaulter and despite indulgence granted by the Bank, she is not depositing the outstanding loan amount. Therefore, she does not deserve any sympathy of this Court. According to him, for realization of the outstanding loan amount against the petitioner, the respondent Bank may be permitted to auction sale the JCB machine, as notified.

After having heard the parties and taking into consideration the entire factual matrices, this Court finds that indisputably, the petitioner is a widow and her husband died hardly within a period of two months after release of the loan amount by the respondent State Bank of India. It is true that thereafter installment amount was not being paid regularly by the petitioner, though as per submission by the learned senior counsel appearing on behalf of the petitioner, more than Rs.3,00,000/- was paid during the year 2014, but thereafter, because of serious ailment and seizure of the machine in question, installment of the loan amount could not be paid. It is also true that in the light of the previous order passed by this Court, the installment amount was fixed by the respondent Bank by order/communication dated 12.09.2015 (Annexure-8) and even thereafter up-front amount of Rs.5,00,000/- could not be paid by the petitioner within the time prescribed. However, taking into consideration the fact that the petitioner is a widow and probably the JCB machine in question is the main source of livelihood of the petitioner and her family members, this Court is of the opinion that one more opportunity should be given to the petitioner to pay the entire outstanding loan amount to the respondent State Bank of India particularly, in view of categorical statement made in paragraph 2 of the supplementary affidavit filed today in Court.

Accordingly, the petitioner is directed to pay a sum of Rs.2,00,000/- (Rupees two lacs) on or before 4th June, 2016 to the respondent State Bank of India and she will further pay Rs. 2,50,000/- (Rupees two lac and fifty thousand) on or before 20th June, 2016. Apparently, Rs.50,000/- has already been paid by the petitioner on 27.11.2015 to the Bank and thereafter on payment of the aforesaid upfront amount, fixed by the Bank, on or before 20th June, 2016, the respondent State Bank of India and its functionaries shall release the seized JCB machine in favour of the petitioner latest by 25th June, 2016 without wasting unnecessary time. Thereafter, the petitioner shall keep on depositing Rs.1,00,000/-(Rupees one lac) per month by the end of every month commencing from July, 2016 till the entire outstanding loan amount of the Bank is liquidated by the petitioner. However, on failure to deposit the aforesaid monthly installments, as fixed by this Court, the respondent State Bank of India and its functionaries shall be at liberty to seize once again the JCB machine of the petitioner and shall further be at liberty to auction sale the same in accordance with law.

The writ petition stands finally disposed of with the observations and directions made above.

The learned counsel appearing on behalf of the respondent State Bank of India shall communicate this order on telephone/Mobile to the respondent State Bank of India and its functionaries forthwith, so that this order is strictly complied with in its letter and spirit.

(Birendra Prasad Verma, J)

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