

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3560 of 2016

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Abinash Chandra Ojha son of Late Bageshwar Prasad Ojha Resident of C-7,
Mauza-Sheikhpura, Shashi Vihar, Shrinagar, North of A.G. Colony Park,
P.S.-Shastri Nagar, District-Patna, Bihar

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Finance Department,
Govt. of Bihar, Patna
2. The State Bank of India through Chairman, Madam Gama Road,
Nariman Point Mumbai 400021
3. The Assistant General Manager, Stressed Assets Reconstruction Branch
(SARB), A-24, Swastik Society, 1st Floor, North Stadium Panch Rasta,
C.G. Road, Ahmadabad
4. That Assistant General Manager, SBI cum Authorized Officer, MID
COrPORate Branch Trade House
5. The Deputy General Manager, Asserts Management Group, Corporation
Centre 1st Floor, State Bank Bhawan
6. M/s Valley Systems Engineers Pvt. Ltd. Company Incorporated Under
the Provision of Companies through its Managing Director Shri Rakesh
Kumar Ojha Son of Shri Abinash Chandra Ojha Resident of 25 Milan
Bungalow, Near Rahul Ray Mall, Duma, Road Surat Udho Udyog Sangh,
Commercial Complex, Udhana Surat, State-Gujarat

.... Opp.Parties

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with

Miscellaneous Jurisdiction Case No.3792 of 2016

IN

Civil Writ Jurisdiction Case No. 14493 of 2013

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1. The State Bank of India through its Chairman, Madam Gama Road,
Nariman Point Mumbai 400021
2. The Assistant General Manager, Stressed Assets Reconstruction Branch
(SARB), A-24, Swastik Society, 1st Floor, North Stadium Panch Rasta,
C.G. Road, Ahmadabad
3. That Assistant General Manager, SBI cum Authorized Officer, MID
Corporation Branch Trade House, Ahmadabad actually Chief Manager
Stressed Assets Reconstruction Branch (SARB), A-24, Swastik Society,
01st Floor, North Stadium, Panch Rasta, C G Road, Ahmadabad
4. The Deputy General Manager, Asserts Management Group, Corporation
Centre 1st Floor, State Bank Bhawan, Ahmadabad

.... Petitioners

Versus

1. Abinash Chandra Ojha son of Late Bageshwar Prasad Ojha Resident of
C-7, Mauza-Sheikhpura, Shashi Vihar, Shrinagar, North of A.G. Colony
Park, P.S.-Shastri Nagar, District-Patna, Bihar
2. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
3. M/s Valley Systems Engineers Pvt. Ltd. Company Incorporated Under
the Provision of Companies through its Managing Director Shri Rakesh



Kumar Ojha Son of Shri Abinash Chandra Ojha Resident of 25 Milan Bungalow, Near Rahul Ray Mell, Dume, Road Surat Udho Udyog Sangh, Commercial Complex, Udhana Surat, State-Gujarat

.... Opp.Parties

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with

Miscellaneous Jurisdiction Case No.3629 of 2016

IN

Civil Writ Jurisdiction Case No. 14493 of 2016

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Abinash Chandra Ojha son of Late Bageshwar Prasad Ojha Resident of C-7, Mauza-Sheikhpura, Shashi Vihar, Shrinagar, North of A.G. Colony Park, P.S.-Shastri Nagar, District-Patna, Bihar

.... Petitioner

Versus

1. The State of Bihar through Mr. Ravi Mittal the Principal Secretary, Finance Department, Govt. of Bihar, Patna
2. The State Bank of India through Smt. Arundhati Bhattacharya, wife of name not known, the Chairman, Madam Cama Road, Nariman Point Mumbai 400021
3. Sri H.R. Kansara, son of not known, the Assistant General Manager, Stressed Assets Reconstruction Branch (SARB), A-24, Swastik Society, 1st Floor, North Stadium Panch Rasta, C.G. Road, Ahmadabad
4. Shri P.K. Mankad, son of name not known, the Assistant General Manager, Stressed Assets Reconstruction Branch (SARB), A-24, Swastik Society, 1st Floor, North Stadium Panch Rasta, C.G.Road, Ahmadabad
5. Shri P.P. Ram Krishnan, son of name not known, the Deputy General Manager, Asserts Management Group, Corporation Centre 1st Floor, State Bank Bhawan, Mumbai
6. M/s Valley Systems Engineers Pvt. Ltd. Company Incorporated Under the Provision of Companies through its Managing Director Shri Rakesh Kumar Ojha Son of Shri Abinash Chandra Ojha Resident of 25 Milan Bungalow, Near Rahul Ray Mall, Duma, Road Surat Udho Udyog Sangh, Commercial Complex, Udhana Surat, State-Gujarat

.... Opp.Parties

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Arun Kumar, Advocate

For the Bank : Mr. Kaushlendra Kumar Sinha, Advocate

For the State : Mr. Naman Nayak, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

4 30-11-2016

Heard learned counsels for the petitioners and for

the opposite parties in the modification petition as also in both



the contempt petitions.

The modification petition being MJC No. 3560 of 2016 and the two contempt petitions being MJC Nos. 3792 and 3629 of 2016 arise out of the same order dated 7.9.2016 passed by this Court in CWJC No. 14493 of 2016. By the said order this Court, on the undertaking on behalf of the writ petitioner by his Advocate on record and Senior counsel, directed that the petitioner shall pay on or before 30th September, 2016 an amount of Rs. 75/- lacs to the respondent-State Bank of India and thereafter continue to pay the same amount of Rs. 75/- lacs on or before the last date of each succeeding month until the entire dues of the respondent-Bank are cleared along with the interest on the reducing balance at the agreed rate. It was further directed that so long as the petitioner continues to pay the instalments, as directed, the proceedings under the SARFAESI Act shall remain in abeyance but failure of the petitioner to pay any of the instalments would lead to revival of the same. It was further directed that since there was direction to keep in abeyance the auction sale which was to take place on that date, the failure of the petitioner to deposit the first instalment shall entail initiation of proceedings of contempt against the petitioner.



Both the modification petition and the contempt application filed by the writ petitioner state the fact that the writ petitioner was served with a letter dated 19th September, 2016 by the Bank intimating that the Bank had taken symbolic possession on 21.9.2015 under Section 13(4) of the SARFAESI Act, 2002 of the residential house of the petitioner with a direction to vacate the premises immediately since the Bank had sold the mortgaged property on 7.9.2016 for a sum of Rs. 73,09,000/-.

In the modification petition a prayer is made to extend the period of payment of first instalment till release of Patna residential house of the petitioner from the terms of mortgage on payment of the auction amount or treat the said amount of Rs. 73,09,000/- towards the payment of first instalment.

In the contempt petition filed by the writ petitioner it is submitted that the said action amounted to violation of the order dated 7.9.2016 passed by this Court by the opposite parties of the Bank.

In the contempt petition filed on behalf of the State Bank of India, it is stated that the writ petitioner had disobeyed the order dated 7.9.2016 of this Court by not



depositing the amount of Rs. 75/- lacs on or before 30th September, 2016, or even till 22nd October, 2016 and thus the petitioner has flouted the order passed by this Court and the undertaking given therein.

It is evident that there have been grave lapses on behalf of the opposite parties of the Bank to have proceeded with the auction sale on 7.9.2016 despite the categorical order of this Court which, it is presumed, must have been communicated by learned counsel for the Bank to the authorities of the Bank and if not so communicated, it amounts to serious lapse.

Learned counsel for the State Bank of India submits that he had, in fact, communicated the said order immediately to the authorities of the Bank and the opposite parties of the Bank ought not to have proceeded with the e-auction or taken other steps under the SARFAESI Act as the proceedings were directed to be kept in abeyance.

This Court would have proceeded in the matter to initiate proceedings of contempt as also punish the opposite parties of the State Bank of India, but the conduct of the petitioner shows that he could not make any payment and used the proceedings of this Court in order to avoid and evade any payment. The sole attempt of the writ petitioner in filing the



modification petition is to abuse the process of the Court to avoid and evade the payments which had been undertaken by him. The writ petitioner, in fact, is also liable to be proceeded for contempt of the orders of this Court in this matter but on account of the conduct of the Bank, it is decided not to do so.

No merit is found by this Court in the modification petition which is in continuation of the attempt of the petitioner to hoodwink the Court.

For all the aforesaid reasons, the modification petition and both the contempt petitions are dismissed.

It is made clear that both the parties shall be free to pursue their respective rights and claims in accordance with law and would not be bound by the order dated 7.9.2016 passed by this Court.

(Ramesh Kumar Datta, J)

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