IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12393 of 2013

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Bela Devi, wife of Sri Amrendra Kumar Singh, resident of Mohalla-Lohianagar, Police Station- Lohianagar, District- Begusarai.

.... Petitioner

Versus

1. Bihar Kshetriya Gramin Bank Begusarai Main Branch, Sonajageshwar Complex, Traffic Chowk, through its General Manager Bihar Kshetriya Gramin Bank, Head Office Bhagat Singh Chowk, Munger.
2. The General Manager, Bihar Kshetriya Gramin Bank, Bhagat Singh Chowk, Munger.
3. The Branch Manager, Bihar Kshetriya Gramin Bank, Begusarai Main Branch, Sonajageshwar Complex, Traffic Chowk, Begusarai.
4. The Authorised Officer, Bihar Gramin Bank, Begusarai Main Branch Sonajageshwar Complex Traffic Chowk, Begusarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ram Sevak Choudhary, Advocate

For the Respondents : Mr. Ranjeet Kumar, Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-06-2016

The present writ petition has been filed for quashing the possession notice (without number or date) issued by the respondent Bihar Gramin Bank as contained in Annexure-3, in connection with recovery of an amount of Rs.1,84,407/- together with interest thereon.

2. Learned counsel for the petitioner makes a short submission to the effect that prior to the issuance of the impugned possession notice, no notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (in short “SARFAESI Act”) was ever served on the petitioner and as such the impugned possession notice is not sustainable in law. It is further submitted that the petitioner’s stand is supported by the fact that the respondent-Bank has recently served a notice under Section 13(2) of the SARFAESI Act dated 15.03.2016 on the petitioner during the pendency of the writ petition.

3. Learned counsel for the respondent-Bank, on the other hand, states that a registered notice u/s 13(2) of SARFAESI Act dated 5th December, 2012 had been dispatched to the petitioner and as such the impugned possession notice is valid in law.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submission of learned counsel for the petitioner.

5. While the notice under Section 13(2) of the SARFAESI Act dated 05.12.2012 is said to have been dispatched through registered post, the details of such dispatch or of service thereof on the petitioner have not been brought on record. On the contrary, there is a specific denial by the petitioner that no notice u/s 13(2) was ever served. Moreover, the impugned possession notice refers to issuance of an earlier notice u/s 13(2) dated 27.11.2012, whereas the respondent-Bank has taken a plea of having dispatched a notice u/s 13(2) dated 05.12.2012, and thus there is a discrepancy in

the dates of the two notices. The respondent-Bank has also not explained the circumstances for issuance of the impugned possession notice when such notice itself speaks of an earlier notice u/s 13(4) dated 17.04.2013 already having been issued to the petitioner.

6. In the facts and circumstances of the case, the impugned possession notice as contained in Annexure-3 of the writ petition is therefore set aside. The petitioner is directed to comply with the fresh notice under Section 13(2) of the SARFAESI Act dated 15.03.2016 (Annexure-4) by filing objection thereto, if so advised, within a period of fifteen days from today. It is made clear that the Bank shall thereafter be at liberty to proceed in the matter in accordance with law.

7. This application stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27-06-2016
Transmission Date	N/A