IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7236 of 2011

==

Akhileshwar Prasad Singh, son of Late Brijnandan Prasad Singh, resident of Mohalla-Ghughari Tand, Dandibag, New Colony, P.S.- Civil Lines, District- Gaya.

.... Petitioner/s

Versus

1. The Chairman State Bank of India, Corporate Centre, Madam Cama Road, Reclamation Bay, Mumbai.
2. The Regional Manager, State Bank of India, Antaghat, Patna.
3. The Regional Industrial Office, State Bank of India, A.P. Colony, Gaya.
4. The Authorised Officer, State Bank of India, Regional Industrial Office, A.P. Colony, Gaya.
5. The Branch Manager, State Bank of India, Purani Godown Branch, K.P. Road, Gaya.
6. Shyam Sundar Prasad, son of Kishun Mahton, Proprietor, M/S Friends Marketing, Kushwaha Market, Koeribari, P.S.- Civil Lines, District- Gaya. At presently residing at village Pirawta, P.O.- G.V. Kendra, P.S.- Sirdala, District- Nawada.
7. Ramesh Kumar, son of Ramadhar Singh, resident of North Church Road, Gaya, District- Gaya.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. BABAN SHARMA

For the Respondent/s : Mr. KAUSHLENDRA KUMAR SINHA

==

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-11-2016

Heard Mr. Dharmendra Kumar Sinha for the petitioner and Mr. K.K. Sinha for the respondent State Bank of India (for short 'the Bank').

Petitioner, being the guarantor of the loanee (respondent no. 6), has filed the present writ application to prohibit the respondent Bank from taking action against the guarantor and taking coercive steps in respect of the property mortgaged by the guarantor(petitioner).

In the year 2007, the respondent no. 6 applied for loan wherein an agreement was signed and the petitioner not only stood as the guarantor but also mortgaged his property. The loanee having defaulted in repayment of the loan, the respondent Bank took steps under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). The property mortgaged by the petitioner was taken over and auction sold in favour of respondent no. 7.

Counsel for the petitioner submits that the respondent Bank should have taken steps for realization of loan against the borrower as some property belonging to the borrower was brought to the notice of the Bank. In not doing so, the respondent Bank or the Authorized Officer of the Bank has committed serious illegality.

Mr. Sinha appearing on behalf of the respondent Bank, however, submits that under the Act, the Bank is required to take steps for realization of dues as per the provisions of the Act. The property of the guarantor having mortgaged in favour of the Bank and as such the respondent Bank has rightly proceedeed against the petitioner. He also submits that if the petitioner is aggrieved by any action of the Authorized Officer of the Bank taken under the Act, he has a remedy of filing appeal before the Debt Recovery Tribunal (for short 'the Tribunal') constituted under the Act.

On a consideration of the submissions of the parties, in the opinion of the Court, the petitioner should be granted liberty to approach the Tribunal for ventilation of his grievance in accordance with law.

The writ application is disposed of permitting the petitioner to avail the said remedy.

(Kishore Kumar Mandal, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.11.2016
Transmission Date	