IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17824 of 2011

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Ambrish Kumar, Proprietor of M/S Maha Laxmi Industry, S/O Ashok Kumar, Mohalla-Khandak Par, Near Devi Mandir, P.S. Biharsharif, District - Nalanda

.... Petitioner

Versus

1. The State Bank of India, Biharsharif Bazaar, Mahatma Gandhi Road, Biharsharif, Nalanda, through Its Branch Manager
2. The Branch Manager, the State Bank of India, Biharsharif Bazaar, Mahatma Gandhi Road, Biahrsharif, Nalanda
3. The Authorized Officer, the State Bank of India, Biharsharif Bazaar, Mahatma Gandhi Road, Biahrsharif, Nalanda
4. The New India Assurance Company Limited, Patna Regional Office, Patna through Its Regional Manager
5. The New India Assurance Company Limited, LIC Building, Patna- Ranchi Road, Biharsharif, District- Nalanda through Its Branch Manager

.... Respondents

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Appearance :

For the Petitioner : Mr. Binod Kumar Singh
Ms. Vagisha Pragya Vacalonavi, Advocates
For Respondent-Bank : Mr. Niraj Kumar Sinha, Advocate
For Respondent Nos. 4 & 5: Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 07-04-2016

Heard learned counsel for the petitioner, learned counsel for the Respondent-Bank as also learned counsel for the Respondent-New India Assurance Company Limited.

I.A. No. 1536 of 2013

2. The interlocutory application has been filed for amendment of the writ petition for adding paragraph 16A to 16F of the main writ petition, inter alia, bringing on record letter no. 383 dated 17.09.2012 issued by the Respondent-New India Assurance Company Limited by which the petitioner's Water Damage Claim

under the relevant policy has been repudiated.

3. Having regard to the nature of the prayer, the interlocutory application is allowed and the petitioner is permitted to make amendment in the writ petition accordingly.

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4. The present writ petition has been filed for prohibiting the Respondent-Bank from enforcing the liability under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') against the petitioner and set-off the debt demand of the Respondent-Bank under the loan agreement to the extent the Insurance Company (Respondent No. 5) is liable to pay the value of the insured amount of Rs. 12,50,000/- only (sum assured on the stock of raw materials for making goods and the finished goods, in this case 'ready-made pulses') and, therefore, to that extent the draft undated notice under Section 13(2) of the SARFAESI Act be quashed and the Respondent-Bank should be prohibited to realise the debt under the said notice directly from the petitioner.

5. Learned counsel for the petitioner submits that the Respondent-Bank is not justified in taking steps for recovery of the dues from the petitioner in view of the goods in question having been insured and the liability would fall on the Insurance Company for the

loss suffered by the petitioner.

6. Learned counsel for the respondent-Bank, on the other hand, submits that the writ petition itself is not maintainable, having been filed against the notice under Section 13(2) of the SARFAESI Act, whereas the petitioner does not appear to have filed any objection under Section 13(3-A) of the SARFAESI Act.

7. Learned counsel for the respondent-New India Assurance Company Limited points out that the petitioner is not entitled to any amount from the Insurance Company, its claim having already been repudiated in terms of letter no. 383 dated 17.09.2012 (Annexure-8).

8. Having heard the parties and on careful consideration of the materials available on record, this Court finds the writ petition to be completely devoid of merit. The petitioner has not been able to satisfy this Court that he had taken steps for filing an objection under section 13(3-A) of the SARFAESI Act despite the order of the Debts Recovery Tribunal dated 09.01.2012 passed in SA No. 180 of 2011 (Annexure-D to the counter affidavit). The petitioner has also not shown that any active step for recovery has been taken by the Respondent-Bank by resort to Section 13(4) of the SARFAESI Act. Moreover, despite its claim having been repudiated by letter no. 383 dated 17.09.2012 by the Assurance Company, the same has not been

challenged by the petitioner, even though it has been brought on record through the aforesaid Interlocutory Application. In view of such repudiation, which remains unchallenged, the petitioner cannot claim a right against the Respondent-Assurance Company to make good the loss suffered by him.

9. In the above circumstances, the writ petition stands dismissed.

(Vikash Jain, J)

B.T/-

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