IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15156 of 2015
With
Interlocutory Application No. 2235 of 2016

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Kamlesh Tiwary Son of Late Badri Tiwary, resident of Village - Kinner Chola, Police Station - Chenari, Post Office - Dumari, District - Rohtas (Bihar).

.... Petitioner/s

Versus

1. The Punjab Bank, Zonal Office, Ara, Post Office & Police Station - Ara, District - Bhojpur through its Chief Manager.
2. The Branch Manager, Punjab National Bank, Branch Office - Chenari, Post Office & Police Station - Chenari, District - Rohtas (Bihar).
3. The Authorised Officer, Punjab National Bank, Circle Office, Ara, District - Bhojpur (Bihar).
4. The Certificate Officer, Rohtas at Sasaram, District - Rohtas (Bihar).
5. Sri Devendra Chaubey son of Sri Mahesh Chaubey, resident of Village - Raghunathpur, Police Station - Chenari, District - Rohtas (Bihar).
6. Sri Girish Narayan Tiwary son of Sri Kamta Tiwary, resident of Village - Ubhaon, Police Station - Chenari, District - Rohtas (Bihar).
7. Ravindra Kumar Pandey son of Sri Murlidhar Pandey, resident of Village - Chenari, Post Office & Police Station - Chenari, District - Rohtas (Bihar).

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Dhanendra Chaubey, Advocate
For the Respondent Nos. 1 to 3 : Mr.Kumar Priyaranjan, Advocate
For the Respondent No.4 : Mr.Amish Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 01-06-2016

Heard the learned counsel appearing on behalf of the petitioner as also the learned counsel appearing on behalf of the respondent nos. 1 to 3 and respondent no.4.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the actions taken by the respondent Punjab National Bank, the secured creditor, under Section 13 (4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “SARFAESI Act ”).

3. While assailing the validity and correctness of the actions taken by the respondent Bank by issuing a notice dated 05.09.2015 under Section 13(4) of the SARFAESI Act, the learned counsel for the petitioner submits that the representation filed by the petitioner in terms of Section 13(3-A) of the SARFAESI Act has not been properly decided by taking into consideration all the objections raised on behalf of the petitioner, and therefore, according to him, the consequential action taken under Section 13(4) of the SARFAESI Act is not sustainable in law. Hence, he has filed I.A.No. 2235 of 2016 for staying the action taken by the secured creditor for auction sale of the secured assets.

4. Per contra, the learned counsel appearing on behalf of the respondent nos. 1 to 3 as also the learned counsel appearing on behalf of the respondent no.4 are unanimous in their submissions that the writ petition at this stage is not maintainable and is fit to be dismissed on the ground of availability of alternative remedy to the petitioner under the provisions of the SARFAESI Act itself. According to them, against the action taken by the secured creditor under Section 13(4) of the SARFAESI Act, the aggrieved persons including borrower have right to file an appeal before the Debts Recovery Tribunal in terms of Section 17 of the SARFAESI Act. Therefore, they contend that all the issues of fact raised herein by the petitioner are required to be raised before the Debts Recovery Tribunal at the first instance and only after exhaustion of the alternative remedies available to him under the provisions of the SARFAESI Act, he may invoke the power of judicial review of the High Court under Article 226 of the Constitution of India.

5. After having heard the parties and taking into consideration the scheme and scope of Section 17 of the SARFAESI Act, this Court is of the opinion that the petitioner has an alternative and equally efficacious remedy before the Debts Recovery Tribunal, Patna. Further this court finds that certain disputed question of facts have been raised by the petitioner, which are required to be gone into by the statutory authority at the first instance. It is well settled that the issues of facts must be raised by the parties and conclusively decided by the statutory authorities, at the first instance, and only thereafter the powers of judicial review of the High Court under Article 226 of the Constitution of India may be invoked.

6. For the reasons recorded above as also in view of the judicial pronouncement of the Hon'ble Apex Court in the case of **United Bank of India Vrs. Satyawati Tondon and others [(2010) 8 SCC 110],** the present writ petition as also I.A.No. 2235 of 2016 stand disposed of with a liberty to the petitioner to approach the learned Debts Recovery Tribunal, Patna for grant of appropriate relief (s) with respect to the issues raised in the present writ petition.

7. If an appropriate memorandum of appeal is filed by the petitioner under Section 17 of the SARFAESI Act within a period of two weeks from today with a certified copy of the present order and if it is found to have become barred by limitation and if any petition is filed on behalf of the petitioner for condonation of such delay, then the learned Debts Recovery Tribunal , Patna shall take into consideration that on a bona fide legal advice, the present writ petition was filed on 21.09.2015 before this Court and that remained pending till date.

8. It is further clarified that the parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the property in question before the learned Debts Recovery Tribunal, Patna.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.06.2016
Transmission Date	