

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18006 of 2015

Along with

Interlocutory Application No. 9845 of 2015

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1. Om Shivam Modern Rice Mill Pvt. Ltd., having its registered office at Village & P.O.- Konar, P.S.- Shivsagar (Rohtas), Bihar, through its Managing Director Ajay Kumar.
 2. Ajay Kumar, Managing Director of Om Shivam Modern Rice Mill Pvt. Ltd., S/O Shri Sudarshan Sah, resident of Mohalla- Raj Colony, 174 C, Companysarai, Circle- Sasaram- 821115, Ward No. 9, Rohtas.

.... Petitioner/s

Versus

1. The United Bank of India through its Managing Director, Head Office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata- 700001.
2. The Managing Director, the United Bank of India, Head Office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata- 700001.
3. The Executive Director, the United Bank of India, Head Office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata- 700001.
4. The Chief Regional Manager, United Bank of India, Regional Office, Fraser Road, Patna- 1.
5. The Senior Branch Manager, United Bank of India, Sasaram Branch, Sasaram.
6. The General Manager (Credit), United Bank of India, Regional Office, Abhay Bhawan, 3rd Floor, Fraser Road, Patna- 1.
7. The DGM & CRM, United Bank of India, Regional Office, Abhay Bhawan, 2nd Floor, Fraser Road, Patna- 1.
8. The Senior Manager (Credit), United Bank of India, Abhay Bhawan, 2nd Floor, Fraser Road, Patna- 1.
9. The Authorized Officer for United Bank of India, Head Office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata- 700001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-01-2016

Heard learned counsel for the parties.

The prayer of the petitioners initially in the writ application was to quash the notice dated 01.10.2015 issued under Section 13(2) read with Section 13(3) of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act') issued by the respondent

no. 9 to the petitioner no. 1.

However, subsequently by order dated 09.12.2015, the Bank has taken symbolic possession under Section 13(4) of the Act, which has been challenged by filing Interlocutory Application No. 9845 of 2015. For the reason that the same is in continuation of the original dispute in the writ petition, the Court deems it appropriate to allow the Interlocutory Application and accordingly the order dated 09.12.2015 passed under Section 13(4) of the Act by the respondent Bank shall also be taken to be impugned in the present writ application. Interlocutory Application No. 9845 of 2015 stands disposed off.

Learned counsel for the petitioners submits that a notice was issued to him on 01.10.2015 under Section 13(2) read with Section 13(13) of the Act by the Bank which was received by him on 11.10.2015. He submits that the same was in fact dispatched by the Bank on 07.10.2015 which would be apparent from the postal receipt pasted on the envelope. It is submitted that pursuant to the same, the petitioners filed their representation/objection before the Authorized Officer of the respondent Bank on 09.12.2015 i.e., within 60 days of receipt of the notice dated 01.10.2015 but surprisingly without considering the same, the Bank has issued possession notice under Section 13(4) of the Act. It is thus submitted that though the power to take such action under the Act is available to the respondent Bank but the manner of its exercise is arbitrary which cannot be allowed as

the more stringent the law, the more it is required that the prescribed procedure should be followed strictly in both letter and spirit.

Learned counsel for the Bank submits that after 60 days of the notice dated 01.10.2015, the action taken by the Bank is in accordance with the provisions of law and thus cannot be faulted. However, he is not in a position to controvert the specific averment of the petitioners on oath that the representation/objection was delivered by him to the Branch Manager at about 1.00 P.M. on 09.12.2015 itself and the notice under Section 13(4) of the Act was pasted only at about 4.00 P.M., the same day.

Having considered the submissions of learned counsel for the parties, without going into the merits of the case, the Court finds that the action of the respondent Bank in taking recourse to Section 13(4) of the Act in the manner in which it has been done in the present case cannot be sustained. Once a representation/objection was before the authorities prior to the actual issuance of an order under Section 13(4) of the Act, there was an obligation on the part of the authorities to consider the same and then action could have been taken as per the merits of the case in accordance with law. This does not seem to have been done in the present case.

Accordingly, for the reasons aforesaid, the possession notice dated 09.12.2015 under Section 13(4) of the Act

issued against the petitioners stands quashed.

However, the Bank is at liberty to act in accordance with law.

The Court would only like to observe that the Bank would also be conscious of its responsibility towards the public and with regard to cause of industrialization and is expected to take a view and exercise its discretionary power, as may be available to it under law, in favour of the petitioners, if the facts and circumstances so justify.

The Court would like to equally emphasize that the petitioners also have to prove their bonafide before the Bank.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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