IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14306 of 2016

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Shankar Lal Sharma, son of Late Bajrang Sharma, resident of Mill Road, P.O. & P.S. Khagaria, District Khagaria

.... Petitioner

Versus

1. The U C O Bank having its Head Office 10, BTM Sarani, Kolkata-700001, West Bengal through its Chairman
2. The Authorized Officer UCO Bank, Zonal Office situated at Sona Jageshwar Complex, Traffic Chowk, Town and District Begusarai
3. The Branch Manager, UCO Bank, Khagaria, District Khagaria

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 09-09-2016 Heard learned counsel for the petitioner and learned counsel for the respondent UCO Bank.

The petitioner seeks quashing of the sale notice dated 19.7.2016 published in the newspaper for auction sale of the residential house of the petitioner and further for a direction to the respondents to obtain fresh valuation at least as per the Circle Rate available in the District Sub-Registrar Office and to obtain market rate of the house property and further for a direction to the respondent Bank to permit the petitioner to sell the house under the supervision of the Bank as the petitioner has got buyer to purchase the petitioner's house and to satisfy the Bank's loan.

The petitioner had taken home loan of Rs.14 lacs in the years 2009 and 2011 by two registered deeds of mortgage dated 19.9.2009 and 25.5.2011 for construction of house over his land bearing Khata No. 248, Plot Nos. 1415 and 1415/1601 having an area of 8 Dhur, 10 Dhurki and 9 dhur respectively, situated in Sanjhauliganj, Khagaria. The petitioner from time to time claims to have paid about Rs.8 lacs, whereas according to the Bank, it has received about Rs.6,82,000/-. The account having become NPA the Bank filed a suit before the DRT claiming Rs.16,30,015/-. For the said amount the Bank has also taken recourse to proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). Pursuant to the SARFAESI proceedings the sale notice dated 19.7.2016 after complying with the other prior procedures under Sections 13(2) and 13(4) was taken by the Bank.

It is the stand of the petitioner that the Bank did not comply with the requirements of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 in so much as the prior notice 30 days before the sale has not been given to the petitioner.

In the counter affidavit filed on behalf of the Bank an assertion has been made that the notice was duly issued but no postal registration of the said notice has been produced by the Bank, whereas postal registered notice at the stage under Sections 13(2) and 13(4) has been produced.

Learned counsel for the petitioner submits that the SARFAESI notice was never served upon the petitioner.

In the above circumstances, it is evident that the sale notice dated 19.7.2016 is contrary to the requirements of the statutory Rules and, therefore, there is violation of the mandatory provision of law.

However, it is pointed out by learned counsel for the Bank that on the date fixed for the auction sale no bidder had turned up.

So far as the question of valuation is concerned, it is the stand of learned counsel for the petitioner that the valuation has been made by the Bank at Rs.59 lacs, whereas another registered valuer of the Bank has made the valuation of the same property at Rs.99.5 lacs, which is in keeping with the circle rate and the market rate.

In that view of the matter, it would be appropriate that a fresh valuation is made of the property in question keeping in view the principles of valuation of property.

With regard to the permission to the petitioner to sell the house under the supervision of the Bank, there should not be any difficulty for the petitioner to sell the house under the supervision of the Bank so long as the proceeds are deposited in the Bank, specially considering the fact that the amount to be recovered is only to the tune of Rs.20 lacs and according to the present valuation of the Bank the property is worth at least Rs.59 lacs.

In the said circumstances, the authorities of the Bank are directed to permit the petitioner to sell the house under the supervision of the Officer authorized by the Bank and the amount received on the sale shall be deposited in the Bank, so that the Bank may recover its dues from the same and return the balance to the petitioner.

The writ application is, accordingly, allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

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