

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1409 of 2016

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M/s Janta Ply N Glass, Shop No. 07 Uttam Palace, Khajpura, Bailey Road, Patna - 800014, represented through its proprietor Md. Asad Rahman.

.... Appellant

Versus

1. The Authorised officer, The Dena Bank, Patna Branch, Maurya Lok Complex, Dak Bungalow Road, Patna - 800001.
2. The Branch Manager, HDFC Bank Ltd., Raja Bazar, Bailey Road, P.S. - Shastrinagar, Patna - 800014.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Y. V. Giri, Senior Advocate Mr. Alok Ranjan, Advocate
For Respondent No.1	:	Mr. Jitendra Kumar Roy, Advocate Mr. Shivendra Kumar Roy, Advocate Mrs. Sheela Sharma, Advocate
For Respondent No.2	:	Mr. Girijesh Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT AND ORDER

(CAV)

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-09-2016

The appellant herein, which is a proprietary concern, entered into a lease agreement with respondent No.2, namely, the Branch Manager, HDFC Bank Ltd., Raja Bazar, Patna, on 24.11.2009, for a period of nine years, whereunder the appellant leased out 1300 square feet of built-up area in Shop No.4, Keshab Palace, Bailey Road, Khajpura, Raja Bazar, Patna, to the respondent. Later on, respondent No.2 on an application made by the appellant, sanctioned a loan of Rs.20,06,320.00 for purchase of Mitsubishi Pajero. At the request of the appellant, respondent No.1, namely, Authorised



Officer, Dena Bank, Patna Branch, took over the outstanding amount in the term loan from respondent No.2, namely, the Branch Manager, HDFC Bank Ltd., Raja Bazar, Patna, and sanctioned a cash credit limit of Rs.80 lakhs and a term loan of Rs. 40 lakhs under the Dena Rent Scheme by letter of sanction, dated 14.02.2012, against mortgage of property leased out to respondent No. 2, namely, the Branch Manager, HDFC Bank Ltd., Raja Bazar, Patna.

2. On the request of the appellant, respondent No.2, namely, the Branch Manager, HDFC Bank Ltd., Raja Bazar, Patna, started paying the rent to respondent No.1, namely, Authorised officer, Dena Bank, Patna Branch, Maurya Lok Complex, Dak Bunglow Road, Patna, with effect from June, 2012. In course of time, the loan account of the appellant became NPA (non-performing asset). Though the appellant claimed that it was not in default, respondent No.1, namely, Authorised officer, Dena Bank, Patna Branch, Patna, treating the appellant as a defaulter, served a demand notice, dated 17.10.2015, under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), requiring the appellant to repay, within 60 days, the amount due, which was quantified, at Rs.74,88,970.65, as on 16.10.2015.

3. By a notice, dated 14.01.2016, published on 20.01.2016, in Hindi daily '*Dainik Bhaskar*' and English daily '*The Telegraph*' respondent No.1, namely, Authorised officer, Dena Bank, Patna Branch, Patna, sought to take possession of the mortgaged property and put the same on sale.

4. Aggrieved by the action, which had been taken by respondent No.1, namely, the Authorized Officer, Dena Bank, Patna Branch, Patna, the Company filed, in this Court, a writ petition, under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 5880 of 2016, seeking quashing of the public notice, dated 06.03.2016, aforementioned, and also for quashing of the notice, dated 14.01.2016, of taking over possession of the land, in question, under Section 13(4) of the SARFAESI Act, and its publication in newspaper on 20.01.2016.

5. By the writ petition aforementioned, the appellant came with the following prayers :

"For issuance of a writ of prohibition against the respondent No.1 not to proceed with the E-auction sale on 08.04.2016 on the ground that the reserve price of the property is grossly undervalued at Rs.91.75 lakhs when its market value in the year 2014 was assessed at Rs.1,39,13,253.00 by the approved valuer.

For holding that the action of the respondent No.1 is in the teeth of the order and judgment passed by Hon'ble Apex Court in



Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. & Ors, reported in **(2014) 6 SCC 1**, whereby and whereunder the Hon'ble Apex Court has held that "where the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined and without the determination of the valid lease, the possession of the lessee is lawful and such lawful possession of a lease has to be protected by all Courts and Tribunals.

For holding that the purported notice under Rule 8(5) under the Security interest (Enforcement) Rules, 2020 ((hereinafter Called the Rules) cannot be construed as 30 days clear cut notice under Rule 8(6) of the Rules and hence the notice dt. 07.03.2016 by respondent no.1 under Rule 8(5) of the Rules is bad in law and that respondent no.1 cannot circumvent the statutory mandatory provision as held by Hon'ble Apex Court in the case of **Mathew Varghese vs. M. Amritha Kumar**, reported in **(2014) 5 SCC 610**.

For holding that the respondent no.1 which took over the loan of the appellant from respondent no.2 has been in the know of the fact that the latter bank is in the possession of the asset under lease for 9 years from 2009 till 23rd Nov. 2018 and yet not referring to this fact as required under 55(1)(a) & (b) of T. P. Act, 1882 in its advertisement for sale on "as is where is and whatever there is basis" is again violation of the

*order and judgment passed by Hon'ble Apex Court in **Haryana Financial Corporation & Anr vs. Rajesh Gupta**, reported in (2010) 1 SCC 655.*

For any other reliefs for which the appellant may be entitled in the facts and circumstances of this case."

6. By order, dated 23.06.2016, a learned single Judge of this Court has, without entering into the merit of the writ petition, dismissed the writ petition on the ground that the appellant has adequate alternative statutory remedy for redressal of his grievance.

7. Aggrieved by the order, dated 23.06.2016, aforementioned, this *intra* Court appeal has been preferred.

8. We have heard Mr. Y. V. Giri, learned Senior counsel, appearing for the appellant, and Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1. We have also heard Mr. Girijesh Kumar, learned Counsel, appearing for respondent No.2.

9. Drawing attention of this Court to the provisions embodied in Section 31(a), Mr. Y. V. Giri, learned Senior counsel, appearing for the appellant, contends that Section 31 bars application of the SARFAESI Act to a leased out property, which may have been mortgaged as a *secured asset*, and in this view of the matter, recourse to the provisions of Sections 13 and 14 of the SARFAESI Act was, in the present case, wholly

without jurisdiction and, therefore, the writ petition lied and learned single Judge ought to have, in the facts and attending circumstances of the present case, allowed the directions, which had been sought for in the writ petition by the petitioner-appellant.

10. In support of his contention that a leased out property, even if mortgaged to a financial institution as a *secured asset*, cannot be made subject matter of the SARFAESI Act, Mr. Y. V. Giri, learned Senior counsel, placed reliance on ***Harshad Govardhan Sondagar*** (supra).

11. Assailing the order under appeal, Mr. Y. V. Giri, learned Senior counsel, also submits that it is well settled that a writ petition, under Article 226 of the Constitution of India, is maintainable even in a case, where statutory remedy may be available if the order, adversely affecting the interests of the person aggrieved, is without jurisdiction.

12. In the case at hand, according to Mr. Giri, since resort to the SARFAESI Act was without jurisdiction, the writ petition ought to have been treated as maintainable and, in the facts and attending circumstances of the case, ought to have been allowed. In order to support his contention, Mr. Giri, placed reliance on ***M/s Whirlpool Corporation Vs. Registrar of Trade Marks and Others*** reported in **(1998) 8 SCC 1**, and on the case of ***Harbans Lal Sahania & another Vs.***

Indian Oil Corporation reported in **(2003) 2 SCC 107.**

13. Resisting the appeal, Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, submits that Section 13(1) of the SARFAESI Act does not bar an immovable property from being taken possession of by a *secured creditor* in case of default in repayment of loan, if the property is mortgaged with *secured creditor* inasmuch as Section 31(e) of the SARFAESI Act, according to Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, covers only such a case, where lease is of movable property.

14. Coupled with the above Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, referring to the case of ***General Manager, Sri Siddeshwara Cooperative Bank Limited and Another v. Ikbai and Others***, reported in **(2013) 10 SCC 83**, submits that in the face of the statutory remedy available under Section 17 of the SARFAESI Act, the writ petition was not, in the facts and the attending circumstances of the present case, maintainable and, therefore, has been rightly dismissed by the learned writ Court.

15. It is the further submission of Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, that in the case at hand, what respondent No.1 had sought to achieve, with the help of the impugned sale notice, was only to take symbolic possession of the property, in question, and not



sell the same and, therefore, Section 31(e) of the SARFAESI Act was not a bar to the initiation of the proceeding under Section 13 of the SARFAESI Act. In the same breath and at the same time, it is also submitted by Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, that the property, in question, has already been sold and sale certificate has been issued in favour of the purchaser. Mr. Jitendra Kumar Roy, learned Counsel, appearing for respondent No.1, however, disputes the contention of Mr. Y. V. Giri, learned Senior counsel, that before sale of the property, in question, no offer of making payment of the price/value, at which the mortgaged property was agreed to be sold, had been given to the – petitioner-appellant by respondent No.1.

16. Referring to Section 31(3) of the SARFAESI Act, Mr. J. K. Roy, learned Counsel, contends that the preposition which connects the words "*hire-purchase*", "*conditional sale*", "*lease*" with the word "*other contracts*" is "*or*" and not "*and*" and thus, the further qualification with the words "*for which there is no security interest created*" would not only qualify the word "*other contracts*" but also the preceding words which have been connected with "*or*", i.e., "*hire-purchase*", "*conditional sale*", "*lease*" and, thus, the words "*for which no security interest has been created*", but also qualifies the preceding words of the Sub-Section, i.e., *hire purchase, conditional sale,*

lease and, therefore, Sub-Section, in terms of the word "*lease*", would also have to be read as "*lease*", where no *security interest* has been created.

17. While considering the present appeal, it may be noted that when the action of the State or its instrumentality is without jurisdiction, such an action, if impugned in a writ petition, made under Article 226 of the Constitution of India, the statutory remedy provided in the legislation, whereunder the action is purported to have been taken, would not render the writ petition not maintainable. In fact, Mr. Giri, learned Senior Counsel, is correct, when he refers, in this regard, to decisions, in ***M/s Whirlpool Corporation*** (supra) and ***Harbans Lal Sahanja*** (supra).

18. If, therefore, it is found that the scheme of Section 31(e) bars, in the light of the law laid down in the case of ***Harshad Govardhan Sondagar*** (supra), application of SARFAESI Act too in a case of present nature, the consequence would be that the action of the respondent No.1, namely, the Authorized Officer, Dena Bank, Patna Branch, would be without jurisdiction and, in such a fact situation, when the appellant had challenged, by way of its writ petition, the impugned action of the respondent No.1, the writ petition could not have been dismissed with direction to the appellant to seek redressal before the appropriate forum.

19. It is in the background of the above facts and in the light of the submissions noted above that the present appeal needs to be decided.

20. The learned single Judge has negated the plea of the petitioner-appellant on the ground that petitioner-appellant has sufficient alternative remedy.

21. The question, which, now, arises is : *whether there is any alternative remedy available to the petitioner on the facts of this case and, if so, whether the writ petition would be rendered not maintainable merely because of the fact that petitioner has alternative remedy?*

22. Admittedly, the *secured asset*, in question, was leased out by the petitioner-appellant to the respondent No. 2, even before the creation of *security interest* in the property, in question, with the respondent No. 1. It is also an admitted fact that respondent No. 1 was fully aware of the fact that *secured asset* has been leased out to the respondent No. 2.

23. In view of the admitted facts, as indicated above, what are the remedies available to the petitioner-appellant is, now, required to be stated.

24. In the case of ***Harshad Govardhan Sondagar*** (supra), one of the issues, which came up for consideration before the Supreme Court, was *whether a lessee has any remedy by way of an appeal under Section 17 of the SARFAESI*

Act, when the secured creditor attempts to take over possession of the secured asset which is in possession of the lessee?

25. Dealing with the above issue, the Supreme Court has observed, in **Harshad Govardhan Sondagar** (supra) that a reading of sub-section (1) of Section 17 of the SARFAESI Act would reveal that “any person (including borrower)”, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the *secured creditor* or his authorized officer under the chapter, may apply to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. The Supreme Court held that the words “*any person*” are wide enough to include a lessee also and further held that it is also possible to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of Rule 8 of the *Security interest (Enforcement) Rules, 2002*, a lessee may file an application before the Debts Recovery Tribunal having jurisdiction, in the matter for restoration of possession in case he is dispossessed from the *secured asset*. But when sub-section (3) of Section 17 of the SARFAESI Act is read, it is found that that the Debts Recovery Tribunal has powers to restore possession of the *secured asset* to the borrower only and not to any person, such



as, a lessee. Hence, even if the Debts Recovery Tribunal comes to the conclusion that any of the measures, referred to in sub-section (4) of Section 13 taken by the *secured creditor*, are not in accordance with the provisions of the Act, it cannot restore possession of the *secured asset* to the lessee. Where, therefore, the Debts Recovery Tribunal considers the application of the lessee and comes to the conclusion that the lease, in favour of the lessee, was made prior to the creation of mortgage or the lease, though made after the creation of mortgage is in accordance with the requirements of Section 65-A of the Transfer of Property Act and the lease was valid and binding on the mortgagee and the lease is yet to be determined, the Debts Recovery Tribunal will not have the power to restore possession of the *secured asset* to the lessee. The Supreme Court, eventually, held that there is no remedy available, under Section 17 of the SARFAESI Act, to the lessee to protect his lawful possession under a valid lease.

26. It may be pointed out here that the lessee, respondent No. 2, has made an unsuccessful attempt before the Debt Recovery Tribunal to protect his possession. It may also be pointed out that the petitioner-appellant was also a party respondent in the application filed by the respondent No. 2.

27. In **Whirlpool Corporation** (supra), the



Supreme Court, while holding that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition, pointed out, in **Whirlpool Corporation** (supra), that the alternative remedy has been consistently held by the Courts not to operate as a bar in, at least, three contingencies, namely, **(i)** *where the writ petition has been filed for the enforcement of any of the fundamental rights; or (ii) where there has been a violation of the principles of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*

28. The petitioner-appellant alleges that in view of the provisions of Section 31 (e) and also the law laid down by the Supreme Court, in **Harshad Govardhan Sondagar** (supra), the taking over of his properties, leased out to the respondent No. 2 by the respondent No. 1, are wholly without jurisdiction. Hence, if, in view of the law laid down by the Supreme Court, in **Harshad Govardhan Sondagar** (supra), the actions of the respondent No. 1 are found to be without jurisdiction, the writ Court will have jurisdiction to decide the matter even though there may exist an alternative remedy.

29. However, according to the learned Counsel for the respondent No. 1, the contracts, in the form of hire-purchase, conditional sale, lease, etc., should be between the

borrower and the creditor so as to attract the provisions of Section 31 (e). According to the learned Counsel, in the present case, since the contract is between the borrower and a different entity, i.e., the HDFC Bank, Section 31 (e) will have no application.

30. It is, indeed, true that Section 31 (e) cannot be read in isolation, because the qualifying clause in Section 31 (e) is the expression "*in which no security interest has been created*". *Security interest*, again, has been defined in Section 2 (zf) to mean right, title and interest of any kind whatsoever upon property, created in favour of any *secured creditor* and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31.

31. The contention of learned Counsel for the respondent No. 1 is that the expression "*lease*", occurring in Section 31 (e), is the *lease* between the borrower and the creditor and not the *lease* between the borrower and a different entity. If the interpretation of the petitioner-appellant is accepted, then, a clever borrower may, after securing the assets with the creditor, defeat the securitization proceedings by leasing out the *secured asset* to a third person to take a plea, later, that the *security interest* cannot, now, be enforced. We, therefore, hold, that Section 31 (e) has no application in the present set of facts.

32. However, we are unable to agree with the submissions of the learned Counsel for the respondent No. 1 that the precedent of **Harshad Govardhan Sondagar** (supra) will not be applicable to the present case for the only reason that Section 31 (e) was not an issue in **Harshad Govardhan Sondagar** (supra) and that the lessee itself has not approached the Court.

33. As to what would be the consequence if the *secured asset* is leased out to a third party came up for consideration in the case of **Harshad Govardhan Sondagar** (supra). In this case, the facts were that the appellants were tenants of different premises. These premises were mortgaged to different banks as securities for loans advanced by the banks (hereinafter referred to as "the *secured creditors*"). As the borrowers had defaulted in repayment of their secured debts the *secured creditors* issued notices to the borrowers intending to take possession of the *secured asset*. The *secured assets*, however, consisted of the premises under possession of the lessees.

34. In the above facts, the Supreme Court, in **Harshad Govardhan Sondagar** (supra), has held that according to sub-section (4) of Section 13, the borrower, if fails to discharge his liability in full within sixty days from the date of notice, as provided in sub-section (2) of Section 13 of the



SARFAESI Act, the *secured creditor* may take recourse to one or more of the measures mentioned therein to recover his secured debt. One of the measures mentioned in clause (a) in sub-section (4) of Section 13 of the SARFAESI Act is to take possession of the *secured assets* of the borrower including the right to transfer by way of lease. Where, however, the lawful possession of the *secured asset* is not with the borrower, but with the lessee under a valid lease, the *secured creditor* cannot take over possession of the *secured asset* until the lawful possession of the lessee gets determined. There is, however, no mention in sub-section (4) of Section 13 of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand determined on the *secured creditor* deciding to take any of the measures mentioned in Section 13 of the said Act. Sub-section (13) of Section 13 of the SARFAESI Act, however, provides that after receipt of notice referred to in sub-section (2) of Section 13 of the SARFAESI Act, no borrower shall lease any of his *secured assets*, referred to in the notice without the prior written consent of the *secured creditor*. This provision in sub-section (13) of Section 13 of the SARFAESI Act and the provisions of the Transfer of Property Act enabling the borrower or the mortgagor to make a lease are inconsistent with each other. Hence, sub-section (13) of Section 13 of the SARFAESI Act will override the provisions of Section 65-A of the Transfer

of Property Act by virtue of Section 35 of the SARFAESI Act and a lease of a *secured asset* made by the borrower after he receives the notice under sub-section (2) of Section 13 from the *secured creditor* intending to enforce that *secured asset* will not be a valid lease.

35. The relevant observations, appearing in ***Harshad Govardhan Sondagar*** (supra), are reproduced below;

"21. When we read the different provisions of Section 13 of the SARFAESI Act extracted above, we find that sub-section (4) of Section 13 provides that in case the borrower fails to discharge his liability in full within sixty days from the date of notice, as provided in sub-section (2) of Section 13 of the SARFAESI Act, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt. One of the measures mentioned in clause (a) in sub-section (4) of Section 13 of the SARFAESI Act is to take possession of the secured assets of the borrower including the right to transfer by way of lease. Where, however, the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined. There is, however, no mention in sub-section (4) of



Section 13 of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand determined on the secured creditor deciding to take any of the measures mentioned in Section 13 of the said Act. Sub-section (13) of Section 13 of the SARFAESI Act, however, provides that after receipt of notice referred to in sub-section (2) of Section 13 of the SARFAESI Act, no borrower shall lease any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. This provision in sub-section (13) of Section 13 of the SARFAESI Act and the provisions of the Transfer of Property Act enabling the borrower or the mortgagor to make a lease are inconsistent with each other. Hence, sub-section (13) of Section 13 of the SARFAESI Act will override the provisions of Section 65-A of the Transfer of Property Act by virtue of Section 35 of the SARFAESI Act, and a lease of a secured asset made by the borrower after he receives the notice under sub-section (2) of Section 13 from the secured creditor intending to enforce that secured asset will not be a valid lease.”

36. It has been further held, in **Harshad Govardhan Sondagar** (supra), that Section 105 of Transfer of Property Act, 1882, provides that a lessee of an immovable property has a right to enjoy such property, for a certain time or in perpetuity, when a lessor leases an immovable property



transferring his right to enjoy such property for a certain time or in perpetuity. Section 111 of the Transfer of Property Act, 1882, provides different modes by which a lease gets determined. Thus, so long as a lease of an immovable property does not get determined, the lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided in Article 300-A of the Constitution. The Supreme Court has further held, in **Harshad Govardhan Sondagar** (supra), that there is no provision in Section 13 of the SARFAESI Act that a lease in respect of a *secured asset* shall stand determined, when the *secured creditor* decides to take the measures mentioned in Section 13 of the said Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals. The relevant paragraph is reproduced herein below;

"22. Section 105 thus provides that a lessee of an immovable property has a right to enjoy such property, for a certain time or in perpetuity when a lessor leases an immovable property transferring his right to enjoy such property for a certain time or in perpetuity. Section 111 of the Transfer of Property Act, 1882 provides the different modes by which a lease gets determined. Thus, so long as a lease of an immovable property does not get determined, the



lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided in Article 300-A of the Constitution. As we have noticed, there is no provision in Section 13 of the SARFAESI Act that a lease in respect of a secured asset shall stand determined when the secured creditor decides to take the measures mentioned in Section 13 of the said Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals."

37. A reading of **Harshad Govardhan Sondagar** (supra) and the analysis, made hereinbefore, leave us with no manner of doubt that the *ratio* of the decision, in **Harshad Govardhan Sondagar** (supra), is that if the *secured asset* is under a valid lease, its possession cannot be taken by the *secured creditor* until the lease is lawfully determined. The *ratio* of **Harshad Govardhan Sondagar** (supra) does not defeat the rights of the *secured creditor*; rather, it only postpones the securitization proceedings till the date of termination of lease.

38. It is, thus, found that so far as the maintainability of the writ petition is concerned, the writ was maintainable for the reasons we have discussed above inasmuch as the writ petitioner challenged, in the light of law laid down in **M/s Whirlpool Corporation** (supra), the

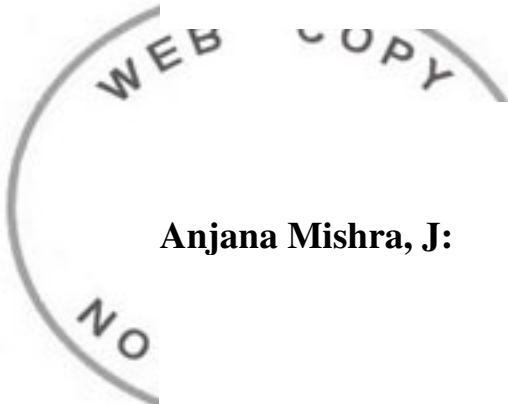
jurisdiction of *secured creditor* to take recourse to the provisions of SARFAESI Act. The finding, therefore, as regards non-maintainability of the writ petition, needs to be interfered with.

39. However, in the course of hearing, it has been pointed out by the learned Counsel for the respondent No. 1 that the *secured asset* has been sold by a public auction to one Shri Kaushalendra Kumar, who has deposited the entire auction amount. It has also been stated that a *sale certificate* has been issued to the auction purchaser on 8.7.2016. Though, it is not clear whether the possession of the *secured asset* has been taken over from the respondent No. 2 or not.

40. In view of the subsequent development, regarding the sale of the *secured assets* in public auction, it would not be proper for us to decide this writ appeal in its entirety without impleading the auction purchaser as a party to the writ proceedings, for, any decision, without hearing the auction purchaser, may prejudice the auction purchaser.

41. In the result, the order, dated 23.06.2016, under appeal, is hereby set aside and the writ petition is remitted to the learned single Judge to decide the writ petition afresh on merits of the case. The appellant-petitioner shall take necessary steps to implead the auction purchaser as a party to the writ petition and, upon hearing all the parties, the writ

petition shall be disposed of, on merit, in accordance with law
and in the light of the observations made hereinbefore.



Anjana Mishra, J:

I agree.

(I. A. Ansari, CJ)

(Anjana Mishra, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	15.07.2016
Uploading Date	20.09.2016
Transmission Date	N.A.