

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3480 of 2009

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1. M/S Astha Enterprises, M-3/10, S.K.Puri, Police Station S.K.Puri, Distt- Patna
Through Its Partner, Mihir Kumar Jha, S/O Late R.K.Jha M-3/10, S.K.Puri, P.S
S.K.Puri, Distt- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The State Bank Of India, State Bank Bhawan, Madam Cama Road, Mumbai-400021 Through Its Chairman-Cum-Managing Director
3. Shri D. P. Bhatt, Son of name not known to the petitioner, Chairman-cum-Managing Director, State Bank Of India, State Bank Bhawan, Madam Cama Road, Mumbai-400021.
4. Sri Anjani Kumar Sinha son of name not known to the petitioner, Assistant General Manager, Rehabilitation and Recovery Branch, State Bank of India, West Gandhi Maidan, District Patna.
5. Shri Bishwaji Kumar Das son of name not known to the petitioner, Assistant General Manager (R-II), Local Head Office, State Bank of India, Judges Court Road, Patna.
6. Sri Ravindra Kumar Jha, son of name not known to the petitioner, Chief Manager, State Bank of India, Sri Krishnapuri Branch, Sahdeo Mahto Marg, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18349 of 2009

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1. M/S Astha Enterprises, M-3/10, S.K.Puri, Police Station S.K.Puri, Distt- Patna
Through Its Partner, Mihir Kumar Jha, S/O Late R.K.Jha M-3/10, S.K.Puri, P.S
S.K.Puri, Distt- Patna

.... Petitioner/s

Versus

1. Union Of India Through The Secretary, Finance Department Secretariat, New Delhi
2. The State Bank Of India, State Bank Bhawan, Madam Cama Road, Mumbai-400021 Through Its Chairman-Cum-Managing Director
3. The Chairman-Cum-Managing Director, State Bank Of India, State Bank Bhawan, Madam Cama Road, Mumbai- 400021
4. The Assistant General Manager, Rehabilitation And Recovery Branch, State Bank Of India, West Gandhi Maidan, Distt- Patna
5. The Assistant General Manager (R-Ii), Local Head Office, State Bank Of India, Judges Court Road, Patna
6. The Chief Manager, State Bank Of India, Sri Krishna Puri Branch, Sahdeo Mahto Marg, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2169 of 2011

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1. M/S Sky Star Estates & Leasing(P) Ltd. Through Its Director Bishwanath Kedia S/O Late Brij Mohan Kedia Resident Of I Hunger Ford Street Kolkata, A Company, Registered Under The Indian Companies Act, 1956 With Its Head Office At Exhibition Road In The Town And District Of Patna Post Office & Police Station Gandhi Maidan, District Patna.

.... Petitioner/s

Versus

1. The State Bank Of India, Body Corporate Constituted Under The State Bank Of India Act 1955 Having Its Corporate Centre At Madam Cama Road, Mumbai And One Of Its Local Head Office At West Of Gandhi Maidan, Patna And One Of Its Branch Office Amongst Other Places Is Known As State Bank Of India Rehabilitation And Recovery Branch, 2nd Floor, Patna Main Branch Building, West Of Gandhi Maidan, District Patna Represented Through The Assistant General Manager Who Is Competent To Verify And Pleased As Per The Regulation 76 And 77 Of The S.B.I. Regulation 1955.

2. State Bank Of India, Stressed Assets Managemant Branch Patna Through (Chief Manager Authorised Officer, 2nd Floor, Patna Main Branch Building West Gandhi Maidan Patna.

3. M/S Astha Enterprises Partnership Concern M-3/10 Sri Krishnapuri P.O. Patna, P.S. Srikrishnapuri, District Patna. Through Mihir Kumar Jha.

4. Sri Mihir Kumar Jha, Partner/Guarantor S/O Sri R.K. Jha M/S Astha Enterprises, Resident Of 818 Asiana Nagar, P.O. + P.S. Ashiana Nagar District Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18263 of 2011

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1. M/S Sky Star Estates & Lansing (P) Ltd. A Company Registered Under The Indian Companies Act, 1956 With Its Branch Office At Exhibition Road In The Town And District Of Patna Post Office & Police Station Gandhi Maidan, District Patna Represented Through Its Director Bishwanath Kedia, Son Of Late Brij Mohan Kedia, Residing Of 9 Hunger Ford Street Kolkatta-20.

.... Petitioner/s

Versus

1. The Union Of India Through Debt Recovery Tribunal Patna Office At Lodipur, Opp. Police Lines, 34, Bank Road, Patna-800001.

2. State Bank Of India A Body Corporate Constituted Under The State Bank Of India Act 1955, Having Its Corporate Centre At Madam Cama Road, Mumbai-400021 And One Of Its Local Head Office At West Of Gandhi Maidan, Patna 800001 And One Of Its Branch Office Amongst Other Places Is Known As State Bank Of India Rehabilitation And Recovery Branch, 2nd Floor, Patna Main Branch Building West Of Gandhi Maidan, District Patna Represented Through The Assistant General Manager, Who Is Competent To Verify And Plead As Per The Regulation 76 And 77 Of The S.B.I. Regulation 1955.

3. State Bank Of India, Stressed Assets Managment Branch, Patna Through (Chief Manager) Authorised Officer, 2nd Floor, Patna Main Branch Building West Gandhi Maidan Patna 800001.

4. M/S Astha Enterprises Partnership Concern M-2/10 Sri Krishna Puri, P.O. Patna, P.S. Srikrishnapur, District Patna Through Mihir Kumar (Jha). Null Null

5. Sri Mihir Kumar Jha, Partner/Guarantor Son Of R.K. Jha M/S Astha Enterprises, Resident Of 818 Ashiana Nagar, P.O. + P.S. Ashiana Nagar, District Patna.

.... Respondent/s

Appearance :

(In MJC No. 3480 of 2009)

For the Petitioner/s : Mr. SUBHASH CHANDRA BOSE

For the Respondents Bank : Mr. K. K. Sinha

Mr. Aditya Sharan, Mr. P. K. Sharan

Mr. Hemant Kumar Sharan

(In CWJC No. 18349 of 2009)

For the Petitioner/s : Mr. SUBHASH CHANDRA BOSE

For the Respondent/s : Mrs. Kanak Verma, C.G.C.

For the Respondent Bank Mr. K. K. Sinha,

Mr. Hemant Kumar Sharan

Mr. Aditya Sharan

Mr. Prabhat Kumar Sharan

Mr. Mukund Jee

(In CWJC No. 2169 of 2011)

For the Petitioner/s : Mr. BINAY KUMAR SINGH

For the Respondent/s : Mr. K.K.SINHA, Mr. Aditya Sharan,

Mr. P. K. Sharan & Mr. H. K. Sharan.

(In CWJC No. 18263 of 2011)

For the Petitioner/s : Mr. BINAY KUMAR SINGH

For the Respondent/s : Mrs. Kanak Verma, C.G.C.

For the Respondent Bank : Mr. K. K. Sinha, Mr. Aditya Sharan,

Mr. P. K. Sharan & Mr. H. K. Sharan.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 03-08-2016

All these four petitions emanate from a singular transaction as between the State Bank of India and the writ petitioner M/S. Astha Enterprises. They were all taken up together with consent of the parties for disposal at this stage.

2. It appears that M/S. Astha Enterprises was carrying on business in trading and for the sake of business it has certain



financial accommodation from the State Bank of India. The financial accommodation was, inter alia, in the shape of cash credit facility which was secured by mortgage. The mortgaged property was immovable property of one Jagtar Singh Purewal as well as another land standing in the name of Rita Thakur, who is also a partner in the Astha Enterprises. It appears that the State Bank of India came to know that Sri Jagtar Singh Purewal, who had given his property in mortgage to the Bank, without information or without permission of the Bank, sold as part of those properties. Accordingly, the Bank stopped the cash credit account operation of Astha Enterprises and threatened to take action for liquidation of dues. It is at this stage that M/S. Astha Enterprises came to this Court in a writ petition and this Court disposed of that writ petition giving liberty to Astha Enterprises to replace the Security and also that if the mortgaged security is sold, the mortgage will not extinguish and restrained the Bank from proceeding further in the matter till the replacement of security matter is finally settled. The Bank preferred a Letters Patent Appeal which was disposed of only with a modification that time was fixed for replacement of security. It appears that for some reason the question of replacement of security could not fructify. State Bank of India then sought to move the Debt Recovery Tribunal as against Astha Enterprises for liquidation of the debt. This brought the Astha



Enterprises in the writ petition which is now before me in which an order was passed by this Court restraining the State Bank from proceeding further for recovery of their dues. Other two writ petitions are by M/S. Sky Star Estates & Leasing (P) Ltd. They are aggrieved by the action of the State Bank as against the properties purchased by them from the said Jagtar Singh Purewal. Their plea is that out of the total land holding of Jagtar Singh Purewal and his family members in 1991, he had sold certain land absolutely by registered sale deed in 1991 to Sky Star Estates. The mortgage was subsequently effected in 1994. Surely, the land of which Jagtar Singh Purewal was no more owner or no more title holder could not have been mortgaged by him to the Bank. Subsequently, Jagtar Singh Purewal sold small portion of the mortgaged land without notice to Sky Star Estates. As such when the Bank proceeded before the Debt Recovery Tribunal and under SARFAESI Act in respect of properties which belonged to Sky Star Estates, firstly the Bank ought to have made Sky Star Estates a party, in absence whereof the properties of Sky Star Estates could not be sold. In neither of the proceeding Sky Star Estate has been made a party, though the respondent Bank was fully aware of this sale because that was the fundamental basis on which the dispute with Astha Enterprises started. Therefore, Sky Star Estate merely seeks stay the proceeding under the SARFAESI Act and Debt Recovery

Tribunal proceeding in respect of the property which they have purchased.

3. The contempt application is that though this Court had fixed a time limit for completing formalities of replacement of security but the respondent Bank did not complete the formality and without doing that they have proceeded to invoke the jurisdiction of the SARFAESI Act and a proceeding before the Debt Recovery Tribunal.

4. To me it appears that certain immovable properties were given as mortgage to the Bank in security for the financial accommodation given by the Bank to M/S. Astha Enterprises. Those assets remained mortgaged. The State Bank would be entitled to move in accordance with law for the enforcement of its dues as against the properties mortgaged to it as there has been no reconciliation of surety or guarantee by Astha Enterprises.

5. In view of the fact stated above, if what is said by Sky Star Estates is to be accepted, then obviously they are required to be made parties in the SARFAESI Act proceeding or before the Debt Recovery Tribunal and they would have liberty to raise such objection as the law permits but suffice to say that a property that was mortgaged, if is transferred after mortgage, it goes with the mortgage. This Court is not deciding the validity of transfers or validity of

mortgage for that would be decided by the appropriate forum at the appropriate time including in the SARFAESI proceeding or before the Debt Recovery Tribunal as and when this arises but suffice to say that the Bank is entitled to move against the securities for enforcement of its dues.

6. In view of the aforesaid direction which I have issued, the interest of the parties are safeguarded and the parties are now free to proceed in accordance with law in the respective jurisdictions subject to objections that may be validly taken by any party in any proceeding. If any objection is raised before the Presiding Officer/Recovery Officer or any other authority by any of the parties, the same would be entertained in accordance with law.

7. This disposes off all these four applications.

(Navaniti Prasad Singh, J)

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