# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.14072 of 2011**

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1. M/S Bhawani Traders Through Its Proprietor Kumar Raushan S/O Late Dineshwar Prasad Verma R/O Mohalla- Dinesh Manna Palace, Kachahary Road, P.S.- Town, Distt.- Begusarai
2. Manna Devi Verma W/O Late Dineshwar Prasad Verma R/O Dinesh Manna Palace, Kachahary Road, Begusarai, P.S.- Town, Distt.- Begusarai (Bihar)
3. Kumar Roshan S/O Late Dineshwar Prasad Verma R/O Dinesh Manna Palace, Kachahary Road, Begusarai, P.S.- Town, Distt.- Begusarai (Bihar)

.... .... Petitioner/s

Versus

1. Bank Of India Through Its Chairman Head Office Is Situated At Express Tower, Nariman Point, Mumbai (India)
2. Deputy Zonal Manager Its Zonal Office Is Situated At Police Station - Bhagalpur, Distt.- Bhagalpur (Bihar)
3. Branch Manager, Bank Of India, Begusarai Branch At Gunjan Bazar Town Thana Chowk, Begusarai, Distt.- Begusarai

.... .... Respondent/s

with

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**Civil Writ Jurisdiction Case No. 4395 of 2010**

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1. Manna Devi Verma W/O Late Dineshwar Prasad Verma R/O Dinesh Manna Palace, Kachahary Road, Begusarai, P.S.- Town, Distt.- Begusarai (Bihar)
2. Kumar Roshan S/O Late Dineshwar Prasad Verma R/O Dinesh Manna Palace, Kachahary Road, Begusarai, P.S.- Town, Distt.- Begusarai (Bihar)

.... .... Petitioner/s

Versus

1. The Chairman, Bank Of India Its Head Office Is Situated At Express Tower, Nariman Point, Mumbai (India)
2. Deputy Zonal Manager, Bank Of India Its Zonal Office Is Situated At Police Station- Bhagalpur, Distt.- Bhagalpur (Bihar)
3. Branch Manager, Bank Of India, Begusarai Branch At Gunjan Bazar Town Thana Chowk, Begusarai, Distt.- Begusarai

.... .... Respondent/s

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**Appearance :**

(In CWJC No.14072 of 2011)

For the Petitioner/s : Mr. N.K. Agarwal, Sr. Advocate.
Mr. Vijay Anand, Advocate

For the Bank : Dr. Binay Kumar Singh, Advocate.

(In CWJC No.4395 of 2010)

For the Petitioner/s : Mr. Vijay Anand, Advocate

For the Bank : Dr. Binay Kumar Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**

ORAL JUDGMENT
**Date: 02-12-2016**

Heard Mr. Agarwal, Sr. Advocate for the petitioners in both the writ petitions and Dr. Binay Kumar Singh for the respondent-Bank of India ( for short 'the Bank'). CWJC No. 14072 of 2011 has been filed for quashing the entire proceedings of O.A. No. 50 of 2010 filed by the respondent-Bank before the Debts Recovery Tribunal, Patna ( in short 'the DRT') requesting to pass an order for recovery of certain amounts outstanding with the petitioners who are borrower(s) or guarantor(s) and proprietor(s) of the firm respectively. CWJC No. 4395 of 2010 has been filed against the notice dated 28.01.2010 issued under the Securitization and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') whereby and whereunder the petitioners were directed to discharge in full the liabilities by paying to the respondent- Bank a sum of Rs. 37,52,336.03/- with interest.

Few facts of the case are not much in dispute. The petitioners are the borrowers of the respondent Bank. The dispute arose about the settlement of the account or reflection of the payment(s) made by the petitioners in the loan account of the petitioner (s). As the respondent -Bank was disinclined to adjust the amount paid by the petitioners against the loan and the no dues certificate, as requested, was not being issued the petitioners filed Title Suit No. 283 of 2007 against the respondent-Bank for an order/declaration that the amount paid by the petitioners in the loan account should reflect/enter in the records of the Bank and the same may be treated to have been paid to the respondent-Bank. The notice was issued to the respondent-Bank by the Court. For one reason or the other the respondent-Bank did not appear in the Suit and contest the same. The Trial Court, after having proceeded *ex parte* considered the case of the plaintiffs-petitioners and by an *ex parte* judgment dated 03.06.2008 (Annexure-3 to CWJC No. 14072 of 2011) decreed the suit. Later a petition under Order IX Rule 13 of the Code of Civil Procedure was filed by the respondent-Bank for setting aside the *ex parte* decree which gave rise to Misc. case no. 09 of 2008 on the file of the learned trial Court. Upon hearing the applicant of the case as well as the petitioners, the trial Court dismissed the said petition vide an order dated 01.10.2010. Dissatisfied therewith the respondent -Bank filed an appeal before this Court vide Misc. Appeal no. 973 of 2010. Upon hearing both sides, this Court, by a judgment dated 29.01.2015 allowed the appeal and after setting aside the order dated 01.10.2010 passed by the learned trial Court remitted the case for fresh hearing and disposal. In other words, the Misc. case no. 09 of 2008 filed by the respondent- Bank for setting aside the *ex parte* decree was revived. There is no controversy at Bar that the said Misc. case no. 09 of 2008 is still pending consideration on the file of the learned Subordinate Judge-1, Begusarai,

Mr. Agarwal, Sr. Advocate, submits that in face of the decree passed by the trial Court declaring that the certain amounts paid by the petitioners in the loan account requires to be adjusted or reflected in the loan account of the petitioners, the respondent- Bank could not have taken steps for the realization of the dues under the DRT Act or under any of the provisions of the SARFAESI Act. The respondent- Bank should have awaited the result of the Misc. case no. 09 of 2008 which is pending in the Court below for setting aside the *ex parte* decree.

Dr. Singh, conversely, submits that under Section 18 of the Debts Recovery Tribunal Act as well as Section 34 of the SARFAESI Act the jurisdiction of the Civil Court is ousted by specific provisions. The respondent- Bank, in such circumstances, is justified in proceeding against the borrowers-petitioners in terms of the provisions of the DRT Act as well as the SARFAESI Act. Mr. Agarwal, countering the said submission, would submit that no relief, as such, in relation to any action taken by the respondent- Bank either under the DRT Act or under the SARFAESI Act was challenged by the petitioners in the Suit. Only a declaration was sought with regard to adjustment of certain amounts paid by the borrowers- petitioners against the outstanding dues/loan amounts payable by the borrowers to the respondent-Bank which was not reflected in the accounts/book of the respondent –Bank. In this connection, he has again highlighted that so long as the aforesaid declaration/decree survives for which the respondent- Bank itself has taken steps for setting aside the decree it would be highly unjust or unwarranted on the part of the respondent-Bank to proceed against the petitioners under the relevant provisions of those two acts which have given rise to the two writ petitions.

Indisputably, the respondent-Bank has filed a proceeding before the learned trial Court for setting aside the *ex parte* decree which is pending consideration before the trial Court. Apart from the facts which led to non- appearance of the respondent- Bank (defendant of the suit), the respondent- Bank would also be at liberty to raise the jurisdictional issue(s), if any, relying on the two provisions referred to hereinabove on which heavy reliance is placed by the respondent-Bank which shall also be considered by the learned Court below in the light of the objection(s) to be raised in this regard by the petitioners.

Having regard to the aforesaid and also considering the fact that while issuing notice to the respondent-Bank interim protection was granted to the petitioners, I am of the considered view that the respondent- Bank be permitted to contest the pending case bearing Misc. case no. 09 of 2008 pending before the learned subordinate Judge –I, Begusarai wherein all issues of facts and law can be placed/agitated for consideration by the learned Court below.

The counsel for the respondent- Bank has pointed out that the said Misc. case no. 09 of 2008 is pending for a long time on the file of the Court as a result whereof, the loan amount falling due against the petitioners have remained unpaid so far. The learned Court below, in the peculiar facts of the case, be directed to expedite disposal of the Misc. case no. 09 of 2008. Mr. Agarwal, the counsel for the petitioners, has not seriously disputed the said contention.

The writ applications are accordingly allowed. The execution of the certificate issued by the DRT in O.A. No. 50 of 2010 shall remain stayed until disposal of the pending proceeding before the learned Court below. There is no need to pass any order in CWJC No. 4395 of 2010 as only the notice issued under Section 13(2) of the SARFAESI Act was challenged by the petitioners. It is stated and very fairly by the counsel for the respondent- Bank that the respondent-Bank has not thereafter taken any action under the SARFAESI Act against the borrower(s)/guarantor(s) for realization of the dues of the Bank.

It is observed that both the parties hereto who are also parties to the Misc. Case No. 09 of 2008 shall fully cooperate the learned trial Court so that the pending case is disposed of without unnecessary delay preferably within 06 months of production of a copy of this order by both the parties before the learned Court below within 03 weeks.

**(Kishore Kumar Mandal, J)**

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