IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22699 of 2011

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M/S Kamna Enterprises, Khasmahal Road No. 01, Chiraiyatand Road, Patna through its Proprietor Shri Anand Shankar S/o late Hardeo Narayan Sinha Resident of Khasmahal Road No. 1, chiraiyatand, District Patna Presently residing at 306, Kulharia Palace, Ashok Rajpath, Patna.

.... Petitioner/s

Versus

1. Indian Bank, a nationalized Bank, Patna Main Branch, Biscouman Bhawan, West Gandhi Maidan, Patna 800001, through its Chief Manager.
2. The Authorized Officer , Indian Bank, Patna Main Branch, Biscouman Bhawan, West Gandhi Maindan Patna.
3. Dr. (Mrs.) Amita Verma. Amrit Nursing Home, Rajkumarganj, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pravin Kumar

For the Respondent/s : Mr. Dr. Binay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL ORDER

10 21-11-2016 Heard Mr. Ajay Kumar Sinha for the petitioner, Mr.Dr. Binay Kumar Singh for the respondent and Mr. Amarendra Narayan for the respondent no.3 (auction purchaser).

The respondent Bank initiated action against the borrower in accord with the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') inasmuch as upon demand notice issued under Section 13(2) of the SARFAESI Act, the respondents took further steps and took possession of the mortgaged property.

There is no dispute that the petitioner had obtained loan from the respondent-Indian Bank (for short ‘the Bank’) for which the deceased father had stood as a guarantor inasmuch as the ancestral property of the family was mortgaged by him. The respondents having found the borrower in default took steps inasmuch as the property was auction sold on 30.12.2011. The counsel for the respondent no.3 states that from the date of purchase in the auction sale the purchaser is in possession of the subject-property.

Mr. Sinha made diverse submissions to assail the action taken by the respondent Bank. On the contrary, it has been submitted on behalf of the Respondent –Bank that the petitioner has a statutory remedy of filing appeal before the Debts Recovery Tribunal (for short ‘the Tribunal’) under Section 17 of the SARFAESI Act. As the petitioner has statutory remedy, this Court should decline to invoke its extraordinary and discretionary writ jurisdiction granting the petitioner liberty to approach the Tribunal for ventilation of his grievance.

Having heard the parties, the Court does not feel persuaded to invoke its discretionary jurisdiction and dispose of the writ application observing that if any appeal is preferred within a reasonable time seeking condonation of delay the

Tribunal would take into account the fact that the petitioner has been bonafidely pursuing his remedy before this Court.

(Kishore Kumar Mandal, J)

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