IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12832 of 2012

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M/s Shiv Shakti Enterprises a proprietorship firm having its place of business at Rajiv Chowk, Line Bazar Road, Purnea, through its proprietor Shri Kumar Chandragupt, son of Shri Y.N. Gupt, R/o Kumar Auto Spring, Sudin Chowk, Tatma Toli, P.S. Kahat, District Purnea

.... Petitioner

Versus

1. The State Bank of India, registered under the Banking Companies State Bank of India Act, 1985 having its Corporate Office at Nariman Point, Mumbai
2. The Assistant General Manager, State Bank of India RASMECC, Stressed Assets Resolution Centre, Purnea
3. The Authorized Officer, State Bank of India, RASMECC, Stressed Assets Resolution Centre, Purnea
4. Shusil Agrawal, Krishi Kendra, Gulab Bagh, District- Purnea

.... Respondents

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Appearance:

For the Petitioner :	Mr. Alok Kumar Agrawal, Ms. Anubhuti Modi, Advocates
For Respondent-Bank:	Mr. Kaushlendra Kr. Sinha, Advocate
For Respondent No. 4:	Mr. Md. Helal Ahmad, Mr. Md. Anjum Akhtar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-09-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for a direction to the respondent-bank to receive the entire outstanding amount against the cash credit account, to release the title documents pertaining to the land offered by the guarantor as security in terms of Section 13(8) of Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), and also to issue a no dues certificate against the said account; for quashing of the entire proceedings initiated by the respondent bank against the petitioner-firm in exercise of powers under the provisions of the SARFAESI Act including the notice of auction sale published by the respondent bank in the newspaper namely 'Hindustan' on 01.06.2012 in violation of Rule 8(6) proviso of the SARFAESI Rules 2002; and for connected reliefs.

3. According to the petitioner, a loan of Rs. 14,00,000/- was taken by the petitioner from the respondent-State Bank of India (for short, "the SBI") in respect of which collateral security was furnished by one Sri Manindra Kumar Singh by way of equitable mortgage of a plot of land at Purnea measuring 43 decimals. The petitioner also furnished two fixed deposits of Rs. 75,000/- each and two bonds of SBI Life of Rs. 75,000/- each, which were pledged with the SBI. The petitioner did not repay the loan in time, leading the Bank to declare the account of the petitioner as NPA. The bank then resorted to proceedings purportedly under the SARFAESI Act, whereby the said plot of land was also sold in an auction to the respondent no. 4.

4. Learned counsel for the petitioner assails the action of the SBI as being wholly illegal and arbitrary as the mandatory provisions of the SARFAESI Act were not followed before the auction sale of the property. It is stated that even the mandatory notice under Section

13(2) of the SARFAESI Act was not served on the petitioner and the petitioner was not granted any opportunity to file its objections under Section 13(3-A) of SARFAESI Act. It is submitted that the possession notice issued subsequently under Section 13(4) of the SARFAESI Act,a demand notice consequently the auction sale, is therefore wholly illegal and without any authority of law.

5. It is next submitted on behalf of the petitioner that the property has been sold without observing the procedures laid down under the Security Interest (Enforcement) Rules, 2002. In particular, the mandatory requirement of service of a 30 days' notice to the petitioner prior to such sale has not been observed. It is further submitted that the property has been grossly undervalued which is borne out from the fact that the reserve price of the land was fixed at Rs. 10,00,000/- and the sale made for a paltry sum of Rs. 17,02,000/-, even though the circle rate itself was Rs. 1,40,000/- per katha, meaning thereby that the property ought to have fetched a price in the region of around Rs. 60,20,000/-. It is submitted that despite willingness of the petitioner to make payment of the outstanding amounts, the SBI has sold the property to the respondent no. 4. It is stated that apart from the payments of Rs. 50,000/- and Rs. 23,000/- made on 05.03.2012 and 06.03.2012 respectively, the petitioner had prepared two bankers cheques, both dated 16.07.2012, for Rs. 8,50,000/- and Rs. 8,00,000/- respectively, which the SBI refused to

accept, and which, upon such refusal, were despatched by the petitioner to the SBI on 12.10.2012 by speed post.

6. Learned counsel for the SBI, on the other hand, submits that the notice under Section 13(2) of the SARFAESI Act was duly served on the petitioner prior to the possession notice under Section 13(4) being issued. It is submitted that the procedure for sale was in accordance with the Rules, and a clear 30 days' notice was given in the auction notice published 01.06.2012 wherein it was stated that offers received would be opened on 02.07.2012 ie after a period of 30 days.

7. Learned counsel for the respondent no. 4 appears and opposes the writ petition, relying on paragraph 21 of his counter affidavit to submit that the notice under Section 13(2) of the SARFAESI Act had been received by the petitioner but no representation was made by the petitioner in response to the same.

8. Having heard the parties and on a careful consideration of the materials available on record, this Court is unable to accept the submission of the SBI that the mandatory notice under Section 13(2) of the SARFAESI Act was served on the petitioner prior to the issuing of the possession notice under Section 13(4) of the Act. Though specific objection with regard to non-service of notice under Section 13(2) of the Act has been taken in paragraph 20 of the writ petition, the SBI has merely averred in paragraph 22 of its counter affidavit that such notice had been 'issued' but the petitioner failed to make any

response to the same. The SBI has, however, not made any categorical averment that such notice had ever been served on the petitioner prior to issuance of the possession notice. The notice under Section 13(2) of the SARFAESI Act being mandatory in nature, was required to be served before the SBI could proceed to issue the possession notice and take any further action for the purpose of auctioning the property. It is not in dispute that the physical possession of the property had been taken over on 28.03.2011 in terms of Section 13(4), whereas the demand under Section 13(2) of the Act calling upon the petitioner to make payment of amount of Rs. 12,03,971/- together with interest and other costs, was made through a subsequent letter dated 08.02.2012 (erroneously referred to as letter dated 08.02.2010 in paragraph 21 of the counter affidavit of the respondent no. 4) and said to have been received by the petitioner's neighbor. Clearly therefore, the letter dated 08.02.2012 could not constitute a valid notice u/s 13(2) inasmuch as possession of the property had already been taken under Section 13(4) of the Act much prior thereto.

9. The legal position with regard to Rules 8 and 9 of the Rules has been clearly laid down by the Supreme Court in paragraph 31 of its judgment in *Mathew Varghese vs. M. Amritha Kumar and Ors.*, *(2014) 5 SCC 610* as follows –

> *"31 … Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since*

> *rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act."*

10. It has not been disputed by the respondents in the present case that no individual notice under Rule 8(6) of the Act to the borrower was served, which is a clear violation of the procedure in view of the observations in *Mathew Varghese's case* (supra).

11. This Court is therefore satisfied that auction sale of the property in favour of the respondent no. 4 falls foul of the mandatory procedure laid down under SARFAESI Act and the Rules thereunder and hence cannot be sustained, moreso when the petitioner had been making attempts to liquidate the outstanding amounts. The petitioner has taken a specific stand in paragraph 23 of the writ petition that it is ready to pay the entire dues of the SBI.

12. In the above view of the matter, the entire proceedings undertaken by the SBI for auction sale of the property in question in favour of the respondent no. 4 culminating in the sale certificate as contained in Annexure-5 to the counter affidavit of the respondent no. 4, are hereby set aside. The petitioner shall be at liberty to approach the SBI for making payment of its outstanding dues within four weeks from today, failing which the SBI shall be at liberty to take steps afresh in accordance with the SARFAESI Act for recovery of its dues.

13. The writ petition accordingly stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
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