IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18109 of 2015

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Md. Shabuddin son of Late Md. Samsuddin, Resident of Kelala Road, Purabsarai, P.S.- Kotwali, P.O. & District- Munger

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Munger
3. The Bihar Gramin Bank, Head Office, Begusarai, through its Chairman
4. The Authorised Officer, Bihar Gramin Bank, Regional Office, Radha Rani Sinha Road, Adampur, Bhagalpur- 812001
5. The Regional Manager, Bihar Gramin Bank, Regional Office, Radha Rani Sinha Road, Adampur, Bhagalpur- 812001
6. The Branch Manager, Bihar Gramin Bank, Munger

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Sinha Mr. Manoj Madhav, Advocates
For the State	:	Mr. L.P.K. Rajgrihar, AC to AAG4
For Respondent-Bank	:	Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-05-2016

The present writ petition has been filed for quashing Annexure-3 i.e. the possession notice dated 29.10.2015 under the signature of respondent no. 4, issued under section 13(4) read with Rule 8(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called the 'SARFAESI Act') whereby the Respondent Bank has pasted the possession notice on the premises of the petitioner; for commanding the respondents not to take possession or interfere with the property of the petitioner and refrain from taking any coercive action against him or his family members; and for connected reliefs.

2. The matter was listed today for hearing on the interlocutory application No. 4154 of 2016 which has been filed for stay of the auction sale notice dated 05.05.2016 and for a direction to the respondents not to take any coercive action against the petitioner or his family members. With consent of the parties, however, the main writ petition is taken up for final disposal on merits.

3. Learned counsel for the petitioner submits that he is neither a borrower nor a guarantor nor does he have any concern with the loan transactions entered into between the respondent-Bank and Md. Maqubul Hasan, now deceased, who happened to be the nephew of the petitioner. The guarantor for the said loan was Bibi Rehana Khatoon. Learned counsel for the petitioner submits that the property mortgaged to the bank was as follows:

> "All that part & parcel of the property consisting of Land & building Area – 9 Decimal (3919.68 Sq. fit.) under Ward No. 11(old) and new 17, Holding No. :- 100/616 Khata no. – 55, Khesra No. – 315, Mouza – Banamadha, P.S. – Kotwali, within the registration sub-district and District Munger in the Name of Bibi Rehana Khatoon Devi w/o Gayasuddin.
> Bounded by :
> North : Neej Manmokir
> South : Md. Julekha
> East : Seikh Jahi
> West : Amir & Enus"

4. The possession notice under Section 13(4) of the SARFAESI Act referred to the aforementioned property. However,

the name of Bibi Rehana Khatoon had been struck off and the name of the petitioner's deceased mother Bibi Jaibun Nisha was mentioned instead. Further, the details of the boundaries of the property had also been replaced and, according to the petitioner, denote the property now owned by the petitioner and his brothers having devolved upon them from their deceased mother, Bibi Jaibun Nisha.

5. The petitioner apprehends that such change in the particulars of the property mentioned in the possession notice under Section 13(4) of the SARFAESI Act may result in the bank taking action for selling the petitioner's property instead of the borrower's/guarantor's property in the auction sale scheduled to be held on 17.06.2016. It is pointed out that the auction notice itself describes the property as belonging to Bibi Jaibun Nisha, the petitioner's mother.

6. Learned counsel for the respondent-bank, on the other hand, submits that the apprehension of the petitioner is completely misconceived inasmuch as the auction sale notice itself is referable to the property of the borrower and the Bank cannot proceed to sell property other than the mortgaged property. It is further submitted that according to the petitioner's own statement in paragraph 7 of the writ petition, it stands admitted that "description of the property referred to in Annexure 1 and 1/A i.e. in notice to the borrower and guarantor, is

not the property of Bibi Jaibun Nisha or the person on whom the property of Bibi Jaibun Nisha devolved, including the petitioner and his brothers. Moreover, the description of the immovable property mention in the possession notice (Annexure 3) does not match the property where the petitioner and his brothers reside. The khata, khesra and mauza of the property are different from those of the house where the petitioner resides."

7. Having regard to the respective stand of the parties, this Court is of the view that the ends of justice will be met if the petitioner is granted liberty to approach the Authorized Officer, Bihar Gramin Bank, Regional Office, Radha Rani Sinha Road, Adampur, Bhagalpur (Respondent No. 4) with a representation raising his apprehension with regard to the sale of the property of the petitioner and his brothers, which was never mortgaged to the Bank. Learned counsel for the petitioner states that such representation would be filed within ten days from today. If such a representation is filed within the said period of ten days, the respondent-Bank shall consider and dispose of the same within a further period of ten days thereafter in accordance with law, after granting an opportunity of hearing to the petitioner.

8. The writ petition as well as the interlocutory application accordingly stand disposed.

9. It is made clear that the Bank may proceed with the auction sale on the scheduled date if the petitioner's representation has been disposed of prior thereto.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.05.2016
Transmission Date	N/A