IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17772 of 2012

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Amit Kumar son of Late Shambhu Prasad Singh, R/O Mohalla - Ahiyapur New Zero Mile Darbhanga Road, P.S. - Ahiyapur, District - Muzaffarpur

.... Petitioner

Versus

1. The State Bank of India through its Chief Manager, S.B.I., Administrative Office, Club Road, Muzaffarpur
2. The Chief Manager, S.B.I., Administrative Office, Club Road, Muzaffarpur
3. The Manager, State Bank of India, Red Cross Branch, Muzaffarpur
4. The Authorized Officer, State Bank of India, Administrative Office, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Krishna Kant Singh, Adv.

For the S.B.I. : Mr. Rakesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-10-2016

Heard learned counsel for the petitioner and learned counsel for the respondent-bank.

2. The present writ petition has been filed for quashing the possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act"); as well as for quashing the notice under Section 13(2) of the SARFAESI Act whereby and whereunder a demand of Rs. 16,09,401/- with interest has been raised; and for connected reliefs.

3. Learned counsel for the petitioner makes a short submission to the effect that the notice under Section 13(2) of the SARFAESI Act dated 20.10.2011 was addressed to his mother Smt.

Meena Singh, who was one of the partners of M/s Electroplating & Auto Service Centre, who however had already died as far back as on 03.04.2006 itself. The subsequent notice under Section 13(4) of the SARFAESI Act dated 12.09.2012 has similarly been issued in the name of the petitioner's deceased mother. It is therefore submitted that the entire proceedings under the SARFAESI Act are wholly illegal, without jurisdiction and *void ab initio.* As such, all actions of the Bank pursuant to the possession notice under Section 13(4) of the SARFAESI Act are unsustainable in law.

4. Learned counsel for the respondent Bank raises a preliminary objection to the effect that the petitioner has adequate alternative remedy by filing statutory appeal against the impugned notice under Section 13(4) of the SARFAESI Act.

5. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. The fact that the petitioner's mother to whom the impugned notices under Sections 13(2) and 13(4) of SARFAESI Act had been addressed, had already died much prior thereto, has not been disputed by the respondents. Clearly therefore, the respondent Bank has proceeded without having validly served the notices under Section 13(2) and 13(4) of the SARFAESI Act and hence the action of the Bank pursuant to such notices cannot be upheld on this score alone. It is well settled that the mere existence of an alternative remedy is not always a bar to

exercise of discretion by this Court in its writ jurisdiction, moreso in cases involving palpable illegality on admitted facts.

6. In the above circumstances, the impugned notices under Section 13(2) and 13(4) of the SARFAESI Act addressed in the name of the deceased mother are hereby quashed. It is made clear that this Court has not considered the submissions of the petitioner with respect to the proceedings being invalid also on the ground of the bar of limitation.

7. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
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