IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12668 of 2012

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1. Meena Devi, Wife of late Pawan Kumar Dokania @ Pawan Kumar Agrawal
2. Kamal Kumar Dokania, Son of late Pawan Kumar Dokania @ Pawan Kumar Agrawal
3. Shivam Kumar Dokania, Son of late Pawan Kumar Dokania @ Pawan Kumar Agrawal
4. Bulbul Dokania, daughter of Pawan Kumar Dokania @ Pawan Kumar Agrawal,

All Residents of Mohalla- Bara Bazar, Ward No. 28, Post and Police Katihar, District Katihar.

.... Petitioners

Versus

1. The State of Bihar
2. The District Magistrate, Katihar.
3. The Superintendent of Police, Katihar
4. The Central Bank of India though its Zonal Manager, Maurya Lok Complex Patna.
5. The Zonal Manager, Central Bank of India, M.L. Complex
6. The Regional Manager, Central Bank of India, Regional Office, Bhatta Bazar, Purnea
7. The Branch Manager, Central Bank of India, R.C. Branch, Railway Colony, Katihar
8. Shyam Sunder Dokania @Shyam Sunder Agrawal, Son of Fulchand Dokania, Residents of Mohalla- Bara Bazar, Ward No. 28, Post and Police Katihar, District Katihar.

.... Respondents

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Appearance:
For the Petitioners : Mr. Surya Prakash, Advocate
For the Respondents : Mr. Kundan Bhadur Singh SC22
For Respondent-Bank: Mr. Mahendra Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 30-08-2016

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

2. The present writ petition has been filed for quashing the auction sale notice issued under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for

short "the SARFAESI Act") published by the Central Bank of India in the "Dainik Jagran" newspaper on 30.06.2012 (Annexure-7) with regard to the joint family property of the original petitioner, late Pawan Kumar Dokania, mentioned at serial no. 3 of the said notice; directing the respondents not to take any action with regard to the said property till the matter is investigated and decided as the said property is a joint family property of the original petitioner and his cousin, Shyam Sunder Dokania, and in which up till now no partition has taken place; for directing the respondents to hold a proper inquiry and take action against guilty persons; for directing the respondents not to harass and take any action against the present petitioners being the heirs of the original petitioner and his joint family property which is the subject matter of the bank loan; and for connected reliefs.

3. Learned counsel for the petitioners invites attention to the letter dated 22.09.2007 addressed to the Bank raising a clear objection to the loan proposed to be advanced to Shyam Sunder Dokania on the strength of the security of the undivided joint family property without the consent of the original petitioner and his family members, as well as the subsequent legal notice dated 12.12. 2008 to the Bank, categorically stating therein that there was no clear-cut division between the brothers and the family members, and hence the property in question was incapable of being mortgaged at the instance of Shyam Sunder Dokania. Despite such information being given to the

Bank, the Bank nevertheless accepted the subject property by way of mortgage from Shyam Sunder Dokania and advanced a loan to him. The loan having been declared NPA subsequently, the mortgaged property was put on auction to the detriment of the petitioners.

4. A counter affidavit has been filed on behalf of the respondent-Bank, inter alia, stating that a loan of Rs. 8,00,000/- was sanctioned to Shyam Sunder Agrawal as proprietor of Fulchand and Sons on 29.11.2007 in Account No. 1615360572 under the Centvyapari Scheme against a mortgage deed dated 26.09.2007 registered for only one-half share in the land in question. The loan account having become NPA on 27.03.2010, action under the SARFAESI Act was commenced for recovery of the outstanding loan amount. It is further stated that the petitioner had sworn an affidavit dated 03.11.2007 during his lifetime (Annexure-B to the counter affidavit of respondent nos. 4 to 7) which was brought on record before the Bank, in which it was stated that he had withdrawn his aforesaid objection letter dated 22.09.2007. It is also stated that a criminal case bearing C.A. Case no. 2039 of 2012 filed by the petitioner against Shyam Sunder Agrawal and the bank authorities was dismissed on 25.07.2013 by Chief Judicial Magistrate, Katihar. Learned counsel for the Bank makes a statement at the Bar that a partition had taken place between respondent no. 8, Shyam Sunder Agrawal, and the deceased petitioner Pawan Kumar Dokania, as evident from the *Panchnama Batwara* dated 29.10.2007, though such

document has not been brought on record in the counter affidavit.

5. In their rejoinder, the petitioners have alleged forgery, connivance and illegal gratification on the part of the respondents in sanctioning the loan to Shyam Sunder Agrawal despite the objection letter dated 22.09.2007. The genuineness of the affidavit withdrawing the said letter dated 22.09.2007 has categorically been denied as being a forged and fabricated document, and so also the existence of any other family agreement other than the agreement dated 06.12.1981 has been denied by the petitioners. The petitioners have also denied any clear-cut partition of the property. It is further submitted that against dismissal of C.A. Case no. 2039 of 2012, Criminal Revision No. 109 of 2013 has been filed on 07.08.2013 and is pending.

6. Having heard the parties and on careful consideration of the materials on record, this Court is of the view that the grievance raised by the petitioners involves adjudication on questions of fact which are in serious dispute between the parties. The genuineness of the affidavit dated 03.11.2007 on which reliance has been placed by the Bank has been disputed by the petitioners, which thus requires to be determined in an appropriate proceeding, as also whether or not there was a partition between the two brothers. These aspects would first have to be determined before the claims of the petitioners, which would require adduction and appraisal of evidence by the parties, can be properly adjudicated.

7. In this view of the matter, this Court is not inclined to interfere in the matter in its extraordinary writ jurisdiction. The writ petition stands dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
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