IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.356 of 2016

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M/s Mangalam Auto Mobiles through Prop /Rajendra Prasad Singh, Son of late Sheo Pujan Singh, Resident of Mohalla- Chandmari Road, PO Tari , P.S Chapra, Mufassil, Distt Saran.

.... Petitioner/s

Versus

1. The Authorized Officer UCO Bank, Zonal Office, Maurya Lok Complex, 4th Floor, Block 'A' Dak Bangla Road, Patna-800001
2. The Branch Manager, UCO Bank, Chapra & PO & P.S Chapra Dist Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar Singh, Advocate
Mr. Amit Singh, Advocate.

For the Respondent/s : Mr. Shambhu Nath Choubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 04-03-2016

Heard learned counsel for the parties.

The petitioner has moved the Court against the order dated 18.12.2015 passed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the' SARFAESI Act') on the ground that the mandatory requirement of law for service of notice under Section 13(2) of the SARFAESI Act has not been complied with.

Learned counsel for the petitioner submits that the mandate conferred on the secured creditor, under the SARFAESI Act, gives it sweeping powers to achieve the purpose of recovery of its loans and the provisions are stringent in nature. It is, thus, submitted that for taking recourse under the SARFAESI Act, when the provisions are so stringent and the penal consequences very strict, the requirement of law is strict adherence to the procedure prescribed under it which has been held by the Courts also to be mandatory. Learned counsel submits that as per Section 13(2) of the SARFAESI Act, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by *notice in writing* to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4). Learned counsel submits that the said mandatory notice, under Section 13(2) of the Act, was required to be delivered on the borrower (petitioner), which has not been done. Learned counsel submits that the power vested under Section 13(4) of the SARFAESI Act is only subsequent to and subject to fulfillment of the requirement of Section 13(2) of the SARFAESI Act and in the present case, the same not having been done, the action impugned of the UCO Bank (hereinafter referred to as the 'Bank') in directly serving notice under Section

13(4) of the SARFAESI Act cannot be sustained. Learned counsel further submits that even Section 13(4) of the SARFAESI Act read with Rule 8 (1) and (5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules') stipulates that such possession notice has to be delivered to the borrower and also affixed on the outer door or at such conspicuous place of the property and further it shall also be published as soon as possible, but in any case not later than seven days from the date of taking possession in two leading newspapers and further that before effecting sale of the immovable property, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and then may proceed to sell whole or part of immovable assets by the methods prescribed in sub-clauses (a) to (d) of Rule 8(5) of the Rules. Learned counsel submits that valuation relied upon by the respondent Bank is stale as the same is based on inspection made by the valuer on 06.01.2014 which has been brought on record by the Bank itself in its counter and further that there has been no consultation with the borrower i.e., the petitioner, before fixing the reserve price of the property prior to effecting sale. Learned counsel submits that the said requirement of law with regard to the Bank invoking the power under the SARFAESI Act have been held to be mandatory and any action contrary to the said provisions of the Act and Rules, cannot be sustained as has been laid down in the case of ***Mathew Verghese v. M. Amritha Kumar*** reported in ***(2014)5 SCC 610,*** the relevant being at paragraph-53, where the Hon'ble Supreme Court has held that in terms of Rule 8(6) of the Rules, minimum 30 days notice for sale of the immovable secured assets has to be given to the party concerned. In the present case, the admitted position is that the said notice was issued to the petitioner only on 01.02.2016 fixing the date 23.02.2016, which is less than 30 days.

Learned counsel for the Bank has filed counter affidavit and submits that writ is not maintainable as there is an alternate statutory remedy of appeal under Section 17(1) of the SARFAESI Act. On facts also, he submits that the petitioner was served notice under Section 13(2) of the SARFAESI Act as per the requirement of law and even the notice under Section 13(4) having been pasted on its premises, clearly satisfies the requirement of Rule 8(1) of the Rules. As far as the valuation is concerned, it is submitted that the same has been done in accordance with law by an authorized person, as per Rule 2 (d) of the Rules, to which the petitioner cannot object. However, learned counsel has neither produced the notice under Section 13(2) of the SARFAESI Act nor any material to indicate service on the petitioner despite there being a clear averment in the writ petition itself that such notice was not served on him. Learned counsel has also neither addressed in the counter affidavit nor brought any material in support thereof to indicate any consultation with the secured creditor prior to fixing of valuation of the property. Further, the contention of the learned counsel that notice being published in the daily newspaper dated 23.01.2016 fixing the date of auction 23.02.2016 shall be deemed notice to the petitioner and only to complete a mere formality, a notice was also separately served on him on 01.02.2016 and thus, the requirement of 30 days notice before sale of immovable secured assets has been compiled with, cannot be accepted for the reason that the law stipulates *delivery* of a possession notice to the borrower in addition to affixing the same on the outer door or on such conspicuous place of the property, which has neither been done by the Bank nor any material brought in support thereof.

In view of the discussions made hereinabove, in the considered opinion of the Court, the action of the Bank under the SARFAESI Act cannot be sustained. The law mandatorily requires service of notice under Section 13(2) and the same not having been demonstrated before the Court to have been effected as per the requirement of the SARFAESI Act and the Rules, subsequent action automatically stands vitiated.

In the present case, even the modality of service of notice under Section 13(4) of the SARFAESI Act in terms of Rule 8(1) of the Rules, as well as the valuation fixed under Rule 8(5) of the Rules, also not having been complied with, as nothing has either been brought on record in the counter affidavit or produced before the Court, leaves the Court to draw inference that there has been infraction of such legal provisions. The contention of the learned counsel for the petitioner that the valuation is stale and much prior to even the so called and formal taking over possession of the assets, is also substantiated by the materials on record.

For the reasons aforesaid, the Court has no option but to hold that notice under Section 13(2) of the SARFAESI Act being mandatorily required to be served on the petitioner not having been done, the same and all consequential actions stand vitiated and accordingly, set aside.

The writ petition stands disposed off in the aforementioned terms. However, the Bank shall not be precluded in future from taking action for the recovery of its lawful dues against the petitioner in accordance with law.

(Ahsanuddin Amanullah, J)

Sujit/-

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