IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4514 of 2016

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Nilam Sinha, wife of Manoj Kumar Ambastha, resident of Mohalla - Chitragupta Nagar, P.O. - Lohiya Nagar, P.S. - Patrakar Nagar, District - Patna.

.... Petitioner/s

Versus

1. Punjab National Bank, through its Managing Director, Bhikhagu Comma Place New Delhi.
2. Circle Head Office, Punjab National Bank, R. Block, Patna.
3. The Manager, Punjab National Bank, Branch Transport Nagar, Patna - 800007.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 16-03-2016

Heard learned counsel for the parties.

The petitioner has moved the Court for commanding the respondent no. 3 for staying the public notice for sale of properties published in the daily Newspaper 'Hindustan' dated 17.02.2016 by which the mortgaged property of the petitioner has been put on sale.

Learned counsel for the petitioner submits that she was repaying the loan amount but due to circumstances there was default of a few installments resulting in the situation where the Bank is now proceeding to auction sale the mortgaged assets. It is submitted that the petitioner is ready to pay the installments within three months and the Court may grant indulgence.

Learned counsel for the Bank submits that the petitioner herself had submitted an application before the Bank on 19.02.2016 by making payment of Rs. 1,75,000/- and giving an undertaking to repay the outstanding balance amount by

30.03.2016. Learned counsel has drawn the attention of the Court to Annexure-A of the counter affidavit, which is a copy of the said undertaking given by the petitioner in her own pen. It is submitted that the said fact not having been even mentioned in the writ petition which has been filed in the first week of March, 2016 clearly establishes the fact that the petitioner has not moved the Court with clean hands and on this ground alone, the writ petition deserves to be dismissed.

At this stage, learned counsel for the petitioner submits that upon instructions from his client he has been told that the petitioner in view of the pending auction had gone to the Bank authorities along with Rs. 1,75,000/- which she paid and further upon insistence by the Bank authority to give an undertaking to clear the remaining dues by 30th March, 2016, the petitioner, in order to save her property from being auction sold, was compelled to give the undertaking. With regard to not disclosing the fact in the writ petition, it is submitted that due to inadvertence and misconception that once the petitioner has moved the Court, the undertaking would have no value, the same was not disclosed. However, for such omission, the petitioner has tendered unconditional apology to the Court.

Learned counsel for the Bank submits that the Court in view of such suppression of fact, may direct the petitioner to pay 50% within March, 2016 and the rest in two monthly installments.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the fact that the loan taken by the petitioner was for securing a house for herself and her family, taking a lenient view of her suppressing the fact of giving an undertaking to the Bank, though not condoning it, the writ petition stands disposed off with a direction to the petitioner to pay 50% of the balance outstanding by 28th March, 2016 and the remaining 50% shall be paid in two monthly installments latest by 30th April, 2016 and 31st May, 2016. Upon the same being done, the property of the petitioner shall be released from mortgage. The order being passed on the undertaking given on behalf of the petitioner by her learned counsel, any violation of the same besides leading to other penal consequences shall also entitle the Bank to move ahead for recovery of the outstanding amount in accordance with law including sale of her mortgaged property.

In the meantime, the Bank may go ahead with the auction sale but the same shall not be finalized and if the petitioner adheres to the directions given hereinabove, and the total outstanding is cleared by 31st of May, 2016, the sale shall stand cancelled and the mortgaged property of the petitioner shall be released in her favour, failing which the sale shall be confirmed in favour of the highest bidder in accordance with law.

(Ahsanuddin Amanullah, J.)

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