IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8498 of 2016

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H. D. F. C. Bank Ltd. through its Authorized Officer Mr. Raj Kumar Singh, Raja Bazar, Bailey Road, P.S. Shastri Nagar, Patna – 800 014.

.... Petitioner

Versus

1. Dena Bank, Maurya Lok Complex Branch, Patna – 800 001, Bihar through its Authorized Officer.
2. Mr. Asad Rehman, son of not known, Khajpura, B.V. College, Bailey Road, Back of Sattar Miyan Cold Store, Patna – 800 014.
3. The Presiding Officer, Debts Recovery Tribunal, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. P.K.Shahi, Sr. Advocate
Mr. Girijesh Kumar, Advocate

For the Dena Bank : Smt. Sheela Sharma, Advocate
Mr. J.K.Roy, Advocate
Mr. Shivendra Rai, Advocate

For the Resp. No. 2 : Dr. Binay Kumar Singh, Advocate
Mr. Alok Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29-06-2016

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

2. The present writ petition has been filed for quashing of the order dated 07.04.2016 passed by the Debts Recovery Tribunal, Patna in SA No. 55 of 2016; for quashing of 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") dated 14.01.2016 pasted on the premises in possession of the petitioner as Lessee as well as its publication in newspaper on

20.01.2016; and for connected reliefs.

3. On the preliminary objection with regard to non-maintainability of the writ petition on grounds of availability of alternate statutory remedy under Section 17 of the SARFAESI Act by way of an appeal before the Debts Recovery Tribunal, Patna, Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioner submits that such alternate remedy is not available in the case of a lessee in view of the decision reported in *Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others [(2014) 6 SCC 1].* It is further submitted that during the currency of the lease in favour of the petitioner, which is due to expire in the year 2018, the petitioner cannot be evicted by the respondents through the impugned action being taken against the borrower under the provisions of SARFAESI Act.

4. Learned counsel for the respondent bank, however, makes a statement at the Bar that by issuance of the impugned notice dated 14.01.2016 under Section 13(4) of the SARFAESI Act, the bank has merely taken symbolic possession of the property in question and taking any action for evicting the tenant is not in its immediate contemplation.

5. Learned counsel for the private Respondent no. 2 has also appeared and has been heard.

6. Having regard to the stand of the respondent bank,

the petitioner cannot be said to have any apprehension about his eviction from the premises in question at this time and the writ petition is therefore premature.

7. The writ petition accordingly stands disposed with liberty to the petitioner to file a freshly constituted writ petition in the event that the respondent bank takes steps for the petitioner's eviction from the premises.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	11.07.2016
Transmission Date	-