

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14805 of 2012

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Surya Narayan Singh S/o Late Bishwanath Singh R/o in front of L.I.C.
Building, Rambag, P.P. Road, Buxar

.... Petitioner/s

Versus

1. The Allahabad Bank, a Banking Company Constituted Under Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 having its Head Office at 2, Netaji Subhash Road, Kolkata- 700001 through its Chairman
2. The Zonal Manager, Allahabad Bank, Near Kotwali Police Station, Bailey Road, Patna
3. The Branch Manager Allahabad Bank, Munim Chowk, Buxar
4. The Recovery Officer Debt Recovery Tribunal Patna Bihar
5. Binod Kumar Jhemka S/o Late Girdhari Lal Khemka R.O Sumitra Sadan, Pirmuhani, P.S. Gandhi Maidan, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Mukundjee, Advocate

For the Respondent-Bank : Mr. Manoj Kumar, Advocate

For the private respondent: Mr. Jitendra Kishore Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 09-02-2016

Heard the parties.

The petitioner seeks to question for recovery of the dues standing in the name of firm M/s Chandra Jyoti Enterprises. While it is the argument of Mr. Mukundjee appearing for the petitioner that the property in question bearing Khata No. 225, Plot No. 1023 having an area of one katha in the district of Buxar was jointly held by one Jonha Devi along with the present petitioner which was never mortgaged as against the loan taken by M/s Chandra Jyoti Enterprises but such argument is being



contested by Mr. Manoj Kumar, learned counsel appearing for the Bank as well as Mr. Jitendra Kishore Verma, learned counsel appearing for the respondent no. 5 who while questioning the writ petition on grounds of laches and delay have submitted that even on merits the petitioner has no case. It is their case that the wife of the petitioner along with Jonha Devi were partners in the firm and though the property in question was mortgaged within their knowledge but neither the petitioner nor his wife Nirmala Devi ever attempted to question the same.

A Counter affidavit filed on behalf of the private respondent reflects that the property was auction sold way back in the year 2005 in favour of these respondents and whereafter they have also executed sale in favour of different vendees in 2007 and 2011 thus creating third party rights. The petitioner having leisurely spent time since the sale took place in 2005 has woken up from slumber in 2012 to raise issues regarding absence of notice and on merits even when the order passed in the execution case present at Annexure-A to the counter affidavit shows that the wife of the petitioner was a party. The petitioner thus cannot feign ignorance as to the proceedings.

Insofar as the merits of the contest is concerned, although a statutory remedy is available to the aggrieved under the

provisions of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 and the rules framed thereunder but considering the passage of time as well as the orders passed in the execution case which does show that the wife of the petitioner was a party to the proceedings and which is admitted by the petitioner in paragraph-12, I am not persuaded to grant any form of indulgence to the issue raised at such belated stage.

The writ petition is disposed of.

(Jyoti Saran, J)

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