IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.587 of 2016
In
Civil Writ Jurisdiction Case No. 7882 of 2015

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1. M/s J.M.K. Enterprises a Partnership firm having it's place of business at Patel Path, Kankarbagh, Main Road, Patna through one of it's partner Shashi Shekhar son of Sri Mithilesh Prasad resident of 605 A, Dwarkapuri, Road No. 1,Hanuman Nagar, Kankarbagh, Patna-20.
2. Mithilesh Prasad son of Late Somar Prasad, resident of 605 A, Dwarkapuri, Road No. 1, Hanuman Nagar, Kankarbagh, Patna-20.
3. Malti Sinha, wife of Mithilesh Prasad, resident of 605 A, Dwarkapuri, Road No. 1, Hanuman Nagar, Kankarbagh, Patna-20..... .... **Appellants**

Versus

1. The State Bank of India having its corporate office, Nariman Point, Madam Cama Road, Mumbai, through its Chairman-cum-Managing Director.
2. The Chairman-cum-Managing Director, The State Bank of India, Mumbai.
3. V.P. Tiwary, The Assistant General Manager, Stressed Assets Resolution Branch, Patna Branch Building, Patna.
4. The State Bank of India, SME Branch, Boring Road, Patna through it's Chief Manager.
5. The Union of India through, The Recovery Officer-1, Debts Recovery Tribunal, Chchajubagh, Patna.

.... **Respondents**

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Appearance :
For the Appellant/s : Mr. Bhola Kumar, Advocate
For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV ORDER

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

4 16-05-2016 The writ petitioners have preferred the instant appeal against order, dated 16.02.2016, passed in C.W.J.C. No.7882 of 2015, whereby a learned single Judge has rejected their prayer to set aside the letter, dated 21.01.2014, and the subsequent letters issued by respondent No.3, whereunder three mortgaged

properties of the petitioners are being sought to be put on auction sale for recovery of the loan amount.

2. The facts of the case, in short, are that the petitioners took loan of Rs.1.5 Crores from the State Bank of India. Since the petitioners defaulted in payment of loan, the assets were declared as NPA and were, accordingly, called upon to repay the outstanding dues. As the petitioners failed to repay the loan, three mortgaged properties were put on auction sale. The petitioners challenged the decision of the respondent Bank to put the mortgaged properties on auction sale in C.W.J.C. No.7882 of 2015. As the writ petitioners assured the Court to make payment of the entire loan, and as a token whereof, agreed to deposit a sum of Rs.10 lacs, the learned single Judge put on hold the auction sale by way of interim measure. Though the writ petitioners deposited a sum of Rs.10 lacs, they did not make any further deposit with the respondent Bank in spite of undertaking and assurances given to the Court. As the writ petitioners did not fulfill their commitment and did not make any further deposit towards repayment of loan, the learned single Judge dismissed the writ application. The appellants, once again, assured the learned single Judge that they are willing to deposit the entire loan amount.

3. Learned counsel for the respondent Bank submits that consequent upon the dismissal of the writ application, two, out of three mortgaged properties, were already auction sold to the intending purchasers by the Debts Recovery Tribunal for a total sum of Rs.57 lacs and odd.

4. We find that on the assurance of the writ petitioners, the learned single Judge had put on hold the interim auction sale of the mortgaged properties way back on 30.5.2015. In spite of assurances, as no amount was deposited, the learned single Judge, doubting the *bona fide* of the writ petitioners to clear its debt, dismissed the writ application. We do not find any infirmity in the order of learned single Judge in dismissing the writ petition. Besides this, two of the three mortgaged properties have already been auction sold by the Debts Recovery Tribunal upon dismissal of the writ application. The appeal is, accordingly, dismissed.

(Samarendra Pratap Singh, J)

I.A. Ansari, ACJ : I agree.

(I.A. Ansari, ACJ)

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Md. Jamaluddin Khan
N.A.F.R

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