IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21638 of 2011

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Nilu Singh, wife of Shailesh Kumar Singh, Resident Of M 6/44, Block-8, Near Rajendra Nagar Telephone Exchange, Patliputra Path, Police Station- Kadam Kuan, District- Patna.

.... Petitioner

Versus

1. The Allahabad Bank, through Senior Manager, Zonal Office, Budh Marg, Patna.
2. The Authorised Officer, Allahabad Bank, Zonal Office, Budh Marg, Patna.
3. The Branch Manager, Allahabad Bank, Patliputra Colony, Patna.
4. Manoj Kumar, aged about 69 years, son of Late Brajnandan Prasad

.... Respondents

With

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Civil Writ Jurisdiction Case No. 14774 of 2012

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Manoj Kumar Son Of Late Brajnandan Prasad Resident Of B-103, Mohalla P.C. Colony, Police Station Kankarbagh, Town And District Patna

.... Petitioner

Versus

1. The Allahabad Bank, through the Senior Manager Zonal Office, Budh Marg, Patna
2. The Chairman-Cum-Managing Director, Allahabad Bank, Head Office, 2 N.S. Road, Kolkata, West Bengal - 700001
3. The Authorised Officer, Allahabad Bank, Zonal Office, Budh Marg, Patna
4. The Deputy General Manager, Allahabad Bank, Zonal Office, Budh Marg, Patna
5. The Branch Manager, Allahabad Bank, Patliputra Branch, Patna
6. The District Magistrate, Patna

.... Respondents

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Appearance:

(In CWJC No.21638 of 2011)

For the Petitioner : Mr. Arvind Kumar, Advocate
For Respondent-Bank : Mr. Sanjay Singh, Advocate
For Intervenor : Mr. Mukeshwar Dayal
Mr. Vikas Mohan, Advocates

(In CWJC No.14774 of 2012)

For the Petitioner : Mr. Prashant Vedasen,
Mr. Subhash Chandra Bose, Advocates
For Respondent-Bank Mr. Ajay Kumar Sinha, Advocate
For the State : Mr. Amaresh Kumar, AC to GP 21

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-08-2016

These writ petitions have been heard together and taken up for disposal at the admission stage with the consent of the parties.

CWJC No. 21638 of 2011

2. An intervention petition in I.A. No. 9329 of 2014 has been filed on behalf of the auction-purchaser, Manoj Kumar, for being impleaded as the intervener-respondent, being the petitioner of CWJC No. 14474 of 2012.

3. For the reasons stated in the interlocutory application, the same is allowed and the petitioner is permitted to implead Manoj Kumar as party respondent no. 4 in this writ petition in the course of the day.

4. This writ petition has been filed by the borrower of the loan in respect of which the subject flat situated on the ground floor bearing no. 44, Block No. 8 of M. 6 Type at Mohallah Rajendra Nagar, Police Station Kadamkuan, District Patna with a total built-up area of 819 Sq. ft, was offered as security, and has been sold to the auction-purchaser under the provisions of the SARFAESI Act.

5. The short facts of the case, according to the petitioner, are that she obtained a loan of Rs. 4,75,000/- from the respondent-Allahabad Bank against which security was offered through mortgage of the aforesaid flat. Deposits from time to time were made towards partial repayment of the loan. The petitioner sought to avail the benefit of the OTS Scheme for the outstanding loan, but no communication was

received from the bank authorities. The petitioner came to know about the possession-cum-sale notice in respect of the aforesaid flat, which was published in the "Times of India" on 31.05.2011 and thereafter made further payments in the month of June, 2011. Despite having accepted such payments, the bank however informed the petitioner by its impugned letter dated 10.10.2011 (Annexure-5) that the aforesaid flat had been sold for Rs. 14,00,000/- pursuant to the newspaper publication on 31.05.2011, and the sale proceeds had been adjusted against the outstanding loan. The excess amount of Rs. 7,84,541/- had been adjusted against a separate loan of the petitioner's husband, Sri Shailesh Kumar Singh, for which the petitioner was said to have been the guarantor.

6. Learned counsel for the petitioner has assailed the action of the bank at various levels. Primarily, it is submitted that the sale of the flat has been made without following the mandatory provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"), and the Rules thereunder. He refers to paragraph 7 of the counter affidavit of the bank to submit that the loan account was declared NPA on 30.09.2007, whereas the notice demanding repayment was issued prior thereto on 24.02.2007 and hence cannot be treated as a notice under Section 13(2) of the SARFAESI Act which mandates that such notice be issued after the declaration of loan account as NPA. It is

further submitted that no notice under Section 13(4) of the SARFAESI Act at all was served upon the petitioner, which renders the entire action of the respondent-bank out and out illegal, apart from being in violation of the statutory provisions of Rule 8 of the Security Interest (Enforcement) Rules, 2002. It is further stated that the bank has acted in connivance with the auction purchaser in disposing of the petitioner's flat worth about Rs. 70,00,000/- for only Rs. 14,00,000/- in favour of the auction purchaser, which statement has not been controverted by the bank. It is submitted that this is a fit case for this Court's intervention in view of the shockingly low price which the bank has fetched for the property compared to its prevailing market value. It has further been submitted that the adjustment of the aforesaid excess amount of Rs. 7,84,541/- of the sale proceeds aforesaid against the loan account of the petitioner's husband is equally illegal, as the petitioner denies being the guarantor in respect of such loan and the bank has not produced any material to refute such claim of the petitioner.

7. Learned counsel for the respondent-bank, after some argument, concedes that he is unable to dispute that the loan account was declared NPA on 30.09.2007 in view of the specific statement made to that effect in paragraph 7 of the counter affidavit. He has also failed to demonstrate from the record that notices under Section 13(2) or Section 13(4) of the SARFAESI Act had been issued subsequent to the loan account of the petitioner being declared NPA.

8. Learned counsel for the intervener-respondent appears and has been heard. He submits that he has been denied possession of the aforesaid flat which he has purchased in a legal and valid manner, and that he has incurred irreparable injury by reason of being so denied, and owing to the conveyance of sale deed not having been effected in his favour till date.

9. Having heard the parties and on careful consideration of the materials available on record, this Court finds considerable merit in the writ petition. A bare perusal of Section 13(2) of the SARFAESI Act discloses that in case a borrower makes a default in repayment of a secured loan and his account is classified as a non-performing asset, a notice in writing is required to be given to the borrower to discharge his liabilities to the secured creditor in full within sixty days thereof to avoid the consequences of Section 13(4) of the SARFAESI Act. In the event of failure of the borrower to discharge his liability as provided under Section 13(2), the bank is entitled to take recourse to one or more measures to recover its secured debts including by way of taking possession of and by sale of the property. In view of the mandatory preconditions of sections 13(2) and 13(4) of the SARFAESI Act having admittedly not been complied with, as no notices thereunder are shown to have been served on the petitioner after the loan account was declared NPA, the entire process for sale of the petitioner's mortgaged flat must be held to be illegal and unsustainable on this score alone.

10. In the circumstances, therefore, the sale certificate dated 30.07.2011 (Annexure-R/1) issued in favour of the intervener-respondent is hereby set aside, and the impugned letter dated 10.10.2011 (Annexure-5) of the respondent-bank stands quashed. The flat in question is admittedly in possession of the petitioner, who shall continue to be entitled to its peaceful possession.

11. The writ petition stands allowed.

CWJC No. 14774 of 2012

12. This writ petition has been preferred by the auction purchaser of the flat in question, which was purchased through tender bid opened on 30.06.2011.

13. In view of the sale certificate dated 30.07.2011 in favour of the petitioner-auction purchaser having been quashed in CWJC No. 21638 of 2011 as above, the prayer for a direction to the respondent-bank to effect delivery of physical possession of the property in favour of the auction purchaser does not survive and is dismissed as such.

14. In view of the alternative prayer of the petitioner, the respondent-Bank is hereby directed to refund the entire amount paid by the petitioner by way of purchase money, together with simple interest at the rate of 9% per annum from the date(s) of payment upto the date of actual refund, which must be paid within a period of eight weeks from the date of receipt/production of a copy of this judgment.

15. The writ petition stands disposed with the aforesaid observations and directions.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.08.2016
Transmission Date	N/A