

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.518 of 2017**

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1. Manish Madhav, Son of Shankar Prasad,

2. Rashmi Priya, Wife of Manish Madhav

Both are residents of Tower Chock, Darbhanga, P.S. Darbhanga Town, District Darbhanga

.... .... Petitioners

Versus

1. The State of Bihar through the Principal Secretary Finance Department

2. The Central Bank of India, Darbhanga

3. The Deputy Regional Manager - Cum - Authorized Office, Regional Office, Central Bank of India, At & P.O. Darbhanga, Distt. Darbhanga

4. The District Magistrate, Darbhanga At & P.O. Darbhanga, Distt. Darbhanga

5. The Circle officer, Darbhanga At & P.O. Darbhanga, Distt. Darbhanga

6. Raj Kumar Prasad, Son of Sri Ram Chandra Prasad, resident of Mohalla-Bakarganj, P.S. Laherisarai, District - Darbhanga

.... .... Respondents

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**Appearance:**

For the Petitioner/s : Mr. Jitendra Kumar, Adv.

For the Union of India : Mr. Ajay Kumar Sinha, Adv.

For the State : Kumari Ranjana Bharti, A.C. to S.C.-21

For the Respondent No.5 : Mr. Harishankar Roy, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 18-04-2017**

Heard learned counsel appearing for the respective parties.

2. In this case, the petitioners have taken a loan and the same was credited in the Loan Account vide No.1655255323. The account of the petitioners was declared as N.P.A. on 13.01.2012. Demand Notice under Section 13(2) of Rs.20,35,555/- was issued



on 22.06.2012. The petitioners filed objection before the Bank on 21.08.2012; the same was disposed of by the Bank on 31.08.2012. The loan account of the petitioners was again reconstructed on payment of certain amount on 09.09.2012, but again the same was declared as N.P.A. on 09.08.2013. Whereafter, the Bank has issued notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "*the S.A.R.F.A.E.S.I. Act*") on 14.08.2013. The petitioners have filed objection before the Bank on 03.10.2013, which was disposed of on 24.10.2013, whereafter the action has been taken under Section 13(4) of the S.A.R.F.A.E.S.I. Act. The petitioners filed an appeal vide S.A. No.1 of 2014 on 02.01.2014 under Section 17 of the S.A.R.F.A.E.S.I. Act before the D.R.T. In the meantime, the Bank has issued an advertisement on 23.02.2014 for E-auction.

3. As per the claim of the petitioners neither they have any knowledge about the E-auction nor the notice in terms of Security Interest (Enforcement) Rules, has been given to them.

4. The Bank has appeared and filed reply before the D.R.T. on 05.03.2014, where statement with respect to the auction sale of property has not been made.



5. As per the petitioners, before the D.R.T. they were ready to make payment and liquidate the outstanding dues. The Bank has auction sold the property on 28.03.2014, which was apprised by the private respondent. The appeal which was filed by the petitioner being S.A. No.1 of 2014 was disposed of on 10.04.2014 with a direction to the Bank to give reply to the objection of the petitioners.

6. In pursuance of the order of the D.R.T., the Bank gave its reply to the objection of the petitioners on 24.04.2014 and information was given to the petitioners that property, in question, has been auction sold. Whereafter, the Bank filed an application before the Collector for granting assistance for taking physical possession on 02.07.2016. The petitioners appeared and filed the objection on 15.03.2016. The Collector has passed the final order on 04.11.2016 which is under challenge before this Court as well as auction sale.

7. In view of the judgment of the Hon'ble Supreme court in the case of *Kanaiyalal Lalchand Sachdev & Ors vs. State of Maharashtra & Ors.* reported in *2011(2) S.C.C. 782*, where it has been held that action taken by the Collector under Section 14 is an extension of Section 13(4) of the Act.



8. In such view of the matter, as there is provision of appeal available to the petitioners under Section 17 of the S.A.R.F.A.E.S.I. Act, the petitioners instead of approaching this Court should have approached the D.R.T.

9. In such view of the matter, let the petitioners exhaust the alternative remedy by filing appeal before the D.R.T. under Section 17 of the S.A.R.F.A.E.S.I. Act and take all the points which will be available to them. If they do so, the Tribunal will be obliged to consider the same and decide the case of the petitioners in accordance with law as the petitioners are claiming that auction sale has not been done in terms of the judgment of the Hon'ble Supreme Court in the case of *Mathew Varghese v. M. Amritha Kumar*, reported in *2014 (5) SCC 610* and *Vasu P. Shetty vs. Hotel Vandana Palace and Ors.* reported in *2014(5) S.C.C. 660* .

10. At this stage, it has been informed by learned counsel for the Bank that the father of the petitioners has also challenged the action of putting the property in auction. Let the petitioners also join the father by filing appeal before the Tribunal. If such an appeal is filed, the case of the petitioners and the case of the father will be joined together and will be decided by the Tribunal through the common order. The interim relief granted to the petitioners



stands vacated.

11. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

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