

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No. 80 of 2017

Arising out of

Letters Patent Appeal No. 376 of 2015

Along with

Interlocutory Application No. 1631 of 2017

And

Interlocutory Application No. 1632 of 2017

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Smt. Kanchan Singh, Wife of Praveen Kumar Singh, Proprietor of M/S Steel Adge Industries, Kharmanchak, D.N. Singh Road, P.O.-Bhagalpur City, P.S.-Adampur, District-Bhagalpur.

.... Appellant/s / Petitioner/s

Versus

1. The Syndicate Bank through its Regional Manager, Patna.
2. The Branch Manager Syndicate Bank, Bhagalpur Branch, Patal Babu Road, Bhagalpur.
3. The Authorized Officer, Syndicate Bank, Bhagalpur Branch, Patal Babu Road, Bhagalpur.

.... Respondent/s / Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-04-2017

Heard learned counsel for the petitioner and the
Syndicate Bank (hereinafter referred to as 'the Bank').

Re.: Interlocutory Application No.1631 of 2017

2. The present Interlocutory Application has been filed
seeking condonation of 8 months 13 days delay in filing of the
present Civil Review application.



3. Upon hearing learned counsel for the parties and taking into consideration the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the Civil Review application.

4. In view thereof, the delay in filing of the Civil Review application stands condoned.

5. Interlocutory Application 1631 of 2017 stands disposed off.

Re.: Civil Review No. 80 of 2017

6. The present application has been filed seeking review of the order dated 11.05.2016, by which Letters Patent Appeal No. 376 of 2015, was dismissed.

7. The petitioner had moved the learned Single Bench against the order passed by the Bank for auction of her properties under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'). The learned Single Bench not having interfered, the petitioner preferred L.P.A. No. 376 of 2015 which came to be dismissed by order dated 11.05.2016, which is sought to be reviewed in the present application.

8. Learned counsel for the petitioner submitted that after initial indulgence by a Bench of this Court dated 07.09.2012 in



C.W.J.C. No. 16540 of 2012, the petitioner was directed to pay a sum of Rs. 5 lacs and thereafter Rs. 2 lacs per month and till such payment was being made, further action under the SARFAESI Act was stayed. Learned counsel admitted that though the petitioner has defaulted in making payment, but in terms of the said order, possession of the property was handed over to him and thereafter re-possession was not taken by the Bank. Learned counsel submitted that in terms of Section 13(4) of the SARFAESI Act, the possession has to be taken first and the procedure for such taking over possession has been prescribed in Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules'). Learned counsel submitted that unfortunately at the time of hearing of the matter on 11.05.2016, it was not disclosed before the Court that such taking over possession of the property not having been done in accordance with the provisions of the SARFAESI Act and the Rules, the auction itself was vitiated. Learned counsel further submitted that the jurisdiction of the Court, in review petition, is not limited to matters expressly provided in Section 114 of the Code of Civil Procedure, 1908. It was submitted that law has to bend before justice and for sufficient reasons, the Court should consider a petition filed for review and interfere in the matter. For such proposition, he relied upon the decision of the



Hon'ble Supreme Court in the case of **BCCI v. Netaji Cricket Club** reported as **(2005) 4 SCC 741**, the relevant being at paragraphs no. 88 to 92. Learned counsel summed up his argument by taking a stand that the Court may get an enquiry conducted into the conduct and action of the Bank.

9. Learned counsel for the Bank submitted that the review petition itself is mis-conceived for the reason that all the issues and points raised before the Court in the present review application were neither pleaded nor submitted before the Court, either in the writ proceeding or in the Letters Patent Appeal. Learned counsel submitted that under such circumstances, at this stage, especially at the time of seeking review, such issues cannot be canvassed. Learned counsel relied upon the decision of the Hon'ble Supreme Court in the **State of W.B v. Kamal Sengupta** reported as **(2008) 8 SCC 612**, the relevant being at paragraphs no. 21 and 22. Learned counsel further submitted that the auction under the SARFAESI Act was challenged before the Debts Recovery Tribunal where there was an order to the petitioner to pay the entire dues, which has neither been complied with nor any appeal filed and thus, the same has now attained finality.

10. Having considered the rival contentions, we do not find any merit in the present application. The contention of learned



counsel for the petitioner that certain provisions of the SARFAESI Act and the Rules have been violated are not relevant for the purposes of the present review petition for the reason that the same were neither part of the pleadings nor submissions, either before the original writ Court or the Letters Patent Appeal Bench and for the first time have been raised in the present review application. As far as the reliance of learned counsel for the petitioner on the case of **BCCI** (supra) is concerned, the same does not help the petitioner for the reason that there cannot be any dispute of review application being allowed and the Court has jurisdiction to interfere if sufficient cause is shown. In the present case, there is absolutely nothing which would justify or indicate that there is sufficient reason to interfere as the order which has been passed on 11.05.2016, of which review is sought, was on the premise that the property was auctioned and the sale certificate was issued in favour of the auction purchaser, which, coupled with the admitted position that in terms of the indulgence shown by the Court earlier, of directing the petitioner to pay certain amounts, the petitioner having defaulted, this Court otherwise also does not find 'sufficient cause' to justify any interference in favour of the petitioner. The Court may only indicate that SARFAESI Act is a special law meant for a special purpose and, thus, any interference which is unwarranted, as



in the present case, is not in public interest either.

11. For the reasons stated above, the application stands dismissed.

12. As the main Civil Review application itself has been dismissed, Interlocutory Application No. 1632 of 2017, having become infructuous, stands disposed off.

(Kishore Kumar Mandal, J.)

(Ahsanuddin Amanullah, J.)

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