# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.9568 of 2017**

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1. Prashant Kumar Singh Proprietor, M/s Mongudi Enterprises, Son of Shri Gauri Shankar Singh, Resident of Village- Koriyawa, P.S.- Janipur, Distt.- Patna.

.... .... Petitioner/s

Versus

1. Vijaya Bank, through its Chairman, Head Office 41/2 MG Road, Bangalore-560001.
2. Authorised Officer-cum-Chief Manager, Vijaya Bank, Regional Office, Satkar Shopping Arcade, Ist Floor, Fraser Road, Patna.
3. Senior Branch Manager, Vijaya Bank, Kadamkuan Branch, Geeta Bhawan, Kadamkuan, Patna.
4. Niraj Kumar, Branch Manager, Kadamkuan Branch, Geeta Bhawan, Patna-800003 at present Resident of C/o Krishna Babu, Flat No. 4D/4, Veer Kunwar Singh Marg, Beside Krishna Apartment, Boring Road, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajendra Prasad, Sr. Advocate.
Mr. Kumar Rajeev

For the Respondent/s : Mr. Umapati Jha.

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

ORAL JUDGMENT

**Date: 11-09-2017**

Heard learned counerl for the petitioner and lerned counsel for the Bank.

In the present case, petitioner is challenging the entire SARFAESI proceeding on the fact that loan of Rs. 55 lacs was sanctioned but he has taken only Rs.15 lacs.

At the time of granting the loan four blank cheques were taken by the Bank authority but later on it transpired that the money through RTGS for amount of Rs.15 lacs and Rs.20 lacs (total Rs.35 lacs) have been transferred to the account of Sanjay Kumar Singh and Rs.5 lacs has been transferred to account of

Suman Kumar.

Petitioner has filed a complaint which was referred by the Magistrate under Section 156(3) of the Code of Criminal Procedure for investigation. In the meantime, a proceeding under Section 13 of the SARFAESI ACT has been initiated. Notice has been given under 13(2) of the SARFAESI ACT and objection was filed and the same was replied by the Bank.

Learned counsel for the Bank submits that notional possession of secured premises has been taken and entire premises is under auction.

These matters can be looked into by the Tribunal under Section 17 of the SARFAESI ACT.

In such view of the matter, petitioner is directed file an appropriate application before the Tribunal who will examine, investigate and also hold an enquiry about the entire spectrum of fact as has been claimed by petitioner that he had taken loan of Rs.55 lacs, only Rs.15 lacs has been transferred to his account and rest amount has been transferred to another accounts.

In such view of the matter, the Tribunal will examine whether initiation of proceeding for recovery of Rs.55 lacs and its interest is justified or not. Though the Bank can go ahead for auction but will not dispossess the petitioner till final decision by the Tribunal. If the Bank feels modification of present interim order, Bank will be at liberty to file appropriate application before Tribunal, if any such application is filed by the Bank, the Tribunal will examine the application of modification and pass order in accordance with law.

With the aforesaid observation and direction this writ petition is disposed of.

**(Shivaji Pandey, J)**

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