

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16529 of 2016

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1. Om Shivam Modern Rice Mill Pvt. Ltd., having its registered office at village and P.O. Konar, P.S. Shiv Sagar (Rohtas), Bihar, through its Managing Director, Ajay Kumar.
 2. Ajay Kumar, Managing Director of Om Shivam Modern Rice Mill Pvt. Ltd., S/o Shri Sudarshan Sah, Resident of Mohalla-Raj Colony, 174C, Companysarai Circle, Sasaram, Rohtas.

.... Petitioner/s

Versus

1. The United Bank of India through its Managing Director, Head Office at 11, Hemant Basu Saran, United Tower, 5th Floor, Kolkata-700001.
2. The Managing Director, the United Bank of India, Head Office at 11, Hemant Basu Saran, United Tower, 5th Floor, Kolkata-700001.
3. The Executive Director, the United Bank of India, Head Office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata-700001.
4. The Chief Regional Manager, United Bank of India, Regional Office, Fraser Road, Patna-1.
5. The Senior Branch Manager, United Bank of India, Sasaram Branch, Sasaram.
6. The General Manager (Credit) United Bank of India, Regional Office Abhay Bhawan, 3rd Floor, Fraser Road, Patna-1.
7. The DGM and CRM, United Bank of India, Regional Office, Abhay Bhawan 2nd Floor, Fraser Road, Patna-1.
8. The Senior Manager (Credit) United Bank of India, Abhay Bhawan, 2nd Floor, Fraser Road, Patna-1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinbandhu Singh, Adv.
For the Respondent/s : Mr. Binod Bihari Sinha, Adv.
Mr. Ajay Dutt Mishra, Adv.
Mr. Amarjeet Chaudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 31-10-2017

Heard learned counsel for the petitioner and counsel for the
State.

In this case, the petitioner is challenging the possession
notice dated 23.8.2016 issued under Section 13(4) of the SARFAESI Act as
well as the letter dated 26.8.2016, whereby, the Bank has taken symbolic
possession of the petitioner's property.

Loan was taken by the petitioner and later on 13(2)



proceeding was initiated, called upon the petitioner to file show-cause and the petitioner though filed show-cause but, after the due date. On that account, the Bank refused to take into consideration the explanation filed by the petitioner, straightway the petitioner approached this Court in C.W.J.C. No. 18006 of 2015 and the same was taken up and this Court quashed the notice dated 1.10.2015 and directed the Bank to consider the explanation submitted by the petitioner and pass orders accordingly. It will be relevant to quote relevant portion of the aforesaid order which reads as follows:-

“Having considered the submissions of learned counsel for the parties, without going into the merits of the case, the Court finds that the action of the respondent Bank in taking recourse to Section 13(4) of the Act in the manner in which it has been done in the present case cannot be sustained. Once a representation/objection was before the authorities prior to the actual issuance of an order under Section 13(4) of the Act, there was an obligation on the part of the authorities to consider the same and then action could have been taken as per the merits of the case in accordance with law. This does not seem to have been done in the present case.”

The petitioner filed objection, as per petitioner, his objection has not been taken into consideration but, the Bank has taken action vide order dated 23.8.2016 under Section 13(4) of the SARFAESI Act.

Learned counsel for the petitioner has submitted that already the paddy mill of the petitioner has been sealed and now they are



contemplating to take possession of the residential house.

As there is an alternative remedy available to the petitioner under the SARFASEI Act, he may approach to the Tribunal raising his grievance what he has pleaded in the present writ application in view of the judgment passed in the case of United Bank of India Vs. Satyawati Tondon & Ors. reported in 2010 (8) SCC 110.

In that view of the matter, the petitioner is directed to approach to the Tribunal under the SARFASEI Act within a period of fifteen days from today, if he files proper application before the Tribunal within the aforesaid period of fifteen days, no coercive action will be taken against him within a period of fifteen days thereafter. If the petitioner would fail to file an appropriate application within the aforesaid timeframe, the interim relief, which has been granted today, will be treated to have been vacated and, after fifteen days thereafter, this order will cease to operate.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.11.2017
Transmission Date	NA

