IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5446 of 2015

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Anil Kumar, son of Moti Lal Sah, resident of Village/Mohalla-Chand Marh Dogarh, Police Station- Bali Gaown; District- Vaishali.

.... Petitioner

Versus

1. The Chief General Manager, S.B.I. West of Gandhi Maidan, Patna.
2. The State Bank of India, SARB, Muzaffarpur.
3. The Branch Manager, S.B.I., Mithanpura, Muzaffarpur.
4. Bali Ram Jha, son of Late Ram Anup Jha, Resident of Mithanpur, Mehta Campus Dr. B.N. Jha Gali Ramana, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeev Mishra, Adv.
Mr. Raju Kumar, Adv.
For the Respondent No. 4 : Mr. Mukund Moha Jha, Adv.
For the Bank : Mr. K.K. Sinha, Adv.
Mr. Anjani Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-07-2017

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

2. In this case, the petitioner is challenging the letter no.SARB/MUZ/2114 dated 15.09.2012 issued by the Assistant General Manager, S.B.I. (SARB), Muzaffarpur, whereby it has been informed under SARFAESI proceeding the property has been sold to Sri Bali Ram Jha whereas the Presiding Officer, D.R.T., Patna in its order passed in S.A.186 of 2012 has clearly stated that Bali Ram Jha is a *lis pendes* purchaser and has no right to challenge the SARFAESI action of the Bank. Besides this, there was no authorization by the petitioner to Bali Ram Jha to deposit the loan amount or the petitioner has ever written any letter to accept the loan amount from Bali Ram Jha and thus the action of the Bank is arbitrary with collusion of the Bali Ram Jha and due to which the petitioner has suffered great economical loss.

3. In the present case, the petitioner had taken loan from the State Bank of India for an amount of Rs.4,00,000/-. As the petitioner could not pay the loan amount, the account of the petitioner was declared as N.P.A. and a SARFAESI proceeding was initiated against the petitioner. In pending proceeding, the petitioner has executed four sale deeds in favour of Baliram Jha and obtained the entire consideration amount. This fact was neither brought to the notice of the Bank nor the petitioner informed this fact to Bali Ram Jha about the pendency of the SARFAESI proceeding, but the petitioner has approached this Court in C.W.J.C. No.15451 of 2012 and this Court vide order dated 28.08.2012 has disposed of the matter with the following direction:-

> *"When a proceeding under the SARFAESI Act has been initiated against a borrower and Bank has taken steps, it has to follow the law for realization of its due amount by*

putting the mortgaged property in auction. However, it is open for the borrower to offer the secured creditor the amount of debts. If he does so the respondent-Bank has to consider the offer and give a reasonable opportunity to petitioner to liquidate the dues of the Bank. In the circumstances if petitioner approaches the Bank with such an offer, Bank may consider the same and take appropriate decision so that the property may not be required to be sold."

4. Thereafter, the petitioner has filed a representation before the Bank, which was disposed of. Sri Baliram Jha-respondent no.4 herein, approached to the D.R.A.T. by filing S.A. 186 of 2012 and the Tribunal vide order dated 23.11.2012 has recorded that as the petitioner has sold the property he has no longer any right over the property and that too during the pendency of SARFAESI proceeding, it is completely an act of fraud with the Bank and has no right to challenge the SARFAESI action, but the relief was granted to Bali Ram Jha that if he wants to retain the property, he has to pay the notice amount only and no any other cost and the notice amount be deposited by Sri Bali Ram Jha by the end of February, 2013 in equal monthly installments. It has also been recorded that any amount deposited by Sri Bali Ram Jha be deducted from the notice amount and accordingly, the said S.A. stood disposed of.

5. It is an admitted fact that the property, in question, was transferred by executing the sale deed to Bali Ram Jha. When he has executed sale deed and received the consideration amount, his right and title over the property has extinguished inasmuch as it appears that the possession of the property, in question, was given to Baliram Jha, who has approached to the Revenue Authority and accordingly, mutation has already been carried out.

6. In the present case, the petitioner is challenging the order passed by the Bank, whereby it has been informed and making statement that during SARFAESI proceeding, the property has been sold to Baliram Jha. The matter is *sub-judice* at D.R.T.

7. This Court is of the view that after execution of the sale deed the petitioner has no right or title over the property, in question. When Sri Bali Ram Jha has already paid the amount to the Bank which was taken by the petitioner as loan, asking the Bank to hand over the property, it is completely an act of fraud not only on the Bank but to the Bali Ram Jha also. The manner the petitioner has behaved with the Bank and Bali Ram Jha shows that it is completely sheer callousness on the his part as well as the action of the petitioner is arbitrary and illegal.

8. In such view of the matter, this Court does not find any merit in this writ application. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	10.07.2017
Transmission Date	N/A