IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3497 of 2016

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Navneet Kumar Son of Sri Umeshwar Prasad Choudhary, Resident of E-8, Vijay Nagar, Hanuman Nagar, Kankarbagh, Patna 20.

.... Petitioner/s

Versus

1. The State Bank of India through the Chairman - cum - Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madame Cama Road, Mumbai - 400021.
2. The Chief Manager, State Bank of India, Katihar Branch, Mirchai Bari, Katihar.
3. The Union of India through the Recovery Officer, Debt Recovery Tribunal A and B Wing, 5th Floor Karpuri Thakur Sadan, Kendriya Karmchari Parisar (GPOA), Near Rajiv Nagar Police Station, Ashiana Digha Road, Patna – 800025.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal

For the Respondent/s : Mr. S.D Sanjay (Addl. SOC. Gen.)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-02-2017

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

In this case, the petitioner has made a prayer in the nature that this Court should give direction to the respondent for handing over the possession of the assets purchased by him in an auction conducted on 08.06.2011 in connection with recovery of dues of the respondent-Bank in R.P. No. 4/2007, another alternative prayer has been made that the Bank be directed to return the amount of Rs.34,00,000/- (Rupees thirty four lakh), which the petitioner has deposited by way of consideration amount, as the Recovery Officer as well as the Bank has failed to deliver the possession of the property, which is /was subject matter of auction sale.

The short fact of this case is, one Chandra Shekhar Singh had mortgaged his immoveable property as guarantor situated at Katihar, vide Tauzi No. 1239, Khata No. 484, Thana No. 81, Khesra Nos. 825, 827, 828, 829, 830, 831, having area of 72 decimal, 77 decimal, 11 decimal, 86 decimal, 1 acre 60 decimal, 32 decimal of land respectively to the Bank for securing the loan of Rs. 15,00,000/- (Rupees fifteen lakh) in favour of M/s Better and Best Bricks belonging to one Sajjan Kumar Agrawal.

As the account of the borrower was turned into N.P.A., the borrower could not liquidate outstanding dues, filed an application under section 19 of the Recovery of Debts due to Banks & Financial Institutions Act, 1993, before the Debts Recovery Tribunal, Patna, which was registered as O.A. No. 54 of 2002.

During the pendency of the aforesaid case, the guarantor, namely, Chandra Shekhar Singh died and in his place, his wife Shikha Rani singh, his sons and daughters were substituted.

The D.R.T., Patna has passed the judgment and order dated 21.12.2006, as the borrower or the guarantor failed to pay the amount of Rs. 14,44, 099/- (Rupees fourteen lakh forty four thousand ninety nine) with *pendente lite* and future interest at the rate of 9% *per* *annum* from 20.08.2002 till the realisation of the entire sum due and recoverable. The Recovery Officer started recovery proceeding, vide R. P. Case No. 4 of 2007, to realise the dues amount, the mortgage property was put to auction sale and the reserve price was fixed for Rs. 33,00,000/-(Rupees thirty three lakh), the petitioner offered highest amount of Rs. 34,00,000/- (Rupees thirty four lakh), was declared as successful bidder. In pursuance thereof, the petitioner has deposited Rs. 34,00,000/- (Rupees thirty four lakh), in the manner mentioned in paragraph 8 of this writ application.

The Bank has not disputed the fact of deposit of the aforesaid amount. After depositing the aforesaid amount, the matter came for handing over possession of the property in question, for that, the District Magistrate, Katihar, Senior Superintendent of Police, Katihar were directed to render all possible administrative and police assistance to the respondent-Bank for handing over the possession of the auctioned property to the petitioner, but the property in question could not be handed over to him and thereafter, he filed an application before the Recovery Officer, requesting him to take steps for handing over the possession of the auctioned property and thereafter, the Recovery Officer, vide order dated 13.3.2014, issued a direction upon the Advocate Commissioner, the District Magistrate, Katihar, the Senior Superintendent of Police, Katihar and the Circle

Officer to render all steps to hand over the possession of the purchased assets to the petitioner, but one Shikha Rani Singh filed an application before the Recovery Officer, which was registered as R.A. No. 9 of 2014 and could know that Shikha Rani Singh had filed a writ application before this Court, vide C.W.J.C. No.14661 of 2014, claming therein that assets purchased by the petitioner is her property, neither she had ever sought any loan nor was a guarantor and the order dated 21.12.2006 passed by the P.O., D.R.T., Patna in O.A. No. 54 of 2002 and order dated 13.03.2014 passed by the Recovery Officer, D.R.T, in R.P. No. 4 of 2007 are illegal and without jurisdiction.

Shikha Rani Singh had withdrawn that writ application with a liberty to move before the D.R.T., Patna to review the order and accordingly, she has filed an application for review of the order taking several objections with respect to the right of mortgager and that of the respondent-Bank to accept the same as security and auction sale itself has been challenged.

The matter has remained pending and the petitioner is moving around unsuccessfully and could not get the possession of the property though he has deposited the heavy amount i.e. Rs.34,34,000/- (Rupees thirty four lakh and thirty four thousand) and the Bank or the Recovery Officer till date have failed to hand over the possession of the property which the petitioner has purchased in the auction sale.

The counsel for the Bank submits that it is duty of the Recovery Officer to hand over the possession of the auctioned property to the petitioner, as the petitioner has purchased the property/land in auction sale, the Bank should not be directed for handing over the property, all liabilities lie with the Recovery Officer to hand over the possession of the assets, which the petitioner has purchased in auction sale, further submitted that the petitioner has no right to claim for refund of consideration amount of auction purchase.

Having heard learned counsel for both sides, it will be travesty of justice that the petitioner be deprived of possession of property in alternative, return of consideration amount in failure to hand over the possession of property, has invested so much of money in the year 2011 itself and having been deprived of the possession of the property and moving around with an empty hand. It has further been said by the petitioner, in course of time, said property has been sold to different purchaser now it is very difficult to get the possession of the property. When the petitioner had invested so much of money, it was expected from the Bank as well as the Recovery Officer to give the possession of the property, but they are completely failed to hand over the same.

In such view of the matter, in the interest of justice, this Court is of the view, the Bank should return the amount to the petitioner, which he has deposited in the auction sale.

The counsel for the Bank submits that the Bank in bonafide act has kept the said amount in a non-earning interest account, i.e. current account and as such, this Court should not give direction for payment of the interest.

Be that as it may, the purchaser has invested the heavy amount, he cannot be deprived of the interest for the act of the Bank.

In such view of the matter, this Court directs that the Bank will return the amount along with interest, which the normal customer would get under the TDR Scheme within thirty days from the date of receipt/production of copy of this order.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.03.2017
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