IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7698 of 2013

Pushpa Devi Wife of Sri Surendra Kumar Shawarn resident of Manik Kunwar Niwas, Sati Asthan, Masaurhi, P.S. Masaurhi, District – Patna.

.... Petitioner/s

Versus

1. The Punjab National Bank , Transport Nagar, Patna through its Branch Manager
2. The Branch Manager, the Punjab National Bank, Transport Nagar, Patna
3. The Authorised Officer, Punjab National Bank, Circle Office, Chanakya Tower, R.Block, Patna
4. The Debts Recovery Tribunal, Patna, through the Registrar
5. The Presiding Officer, Debts Recovery Tribunal, Patna
6. Awadh Kishore Singh Son of Late Deo Narain Singh, resident of village + P.O. Hansdiha, P.S. Masaurhi, District Patna
7. Dharmendra Kumar Son of Late Indradeo Singh, Proprietor of M/S Harsh Agency, resident of village + P.O. Hansdiha, P.S. Masaurhi, District Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.

For the Respondent/s : M/s Ajay Kumar and Suresh Pd. Singh No.1, Advs.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-01-2017

Heard the parties.

The petitioner is a purchaser of property in auction, appertaining to Khesra/Plot no. 880, Khata No. 172, Thana No. 5510, Thana No. 144, Masaurhi Bujurg Mandal Masaurhi, Patna, Bihar, area 5.90 Katha. It is a bare land. It appears from the record that the private respondent, Dharmendra Kumar and his family members purchased the land, vide Sale Deed No. 4216, dated 04.09.1988.

The short fact of this case is that the private respondent, Dharmendra Kumar, who started his business in the name and style of M/S Harsh Agency, has taken loan from Punjab National Bank, in pursuance thereof, under equitable mortgage, he has submitted his original deed for facilitating the loan in his favour. In pursuance thereof, the Bank has granted the loan of Rs. 4,00,000/- (four lacs). As the petitioner has not paid the loan amount, the amount was swelled to Rs. 5,26,589/- as on 31.03.2009 whereupon the Bank has resorted the provision of SARFAESI Act, issued notice to the petitioner to deposit the loan amount. In failure, the Bank has auctioned-sold the aforesaid property on 05.02.2013 and confirmed the sale on 14.02.2013. Respondent no. 6 filed appeal before D.R.T. stating that he is ready to deposit the auction amount, in turn, the Tribunal directed to deposit entire Bank amount along with 9% interest, 5% penalty and Rs. 10,000/- cost of litigation

In pursuance of the order, Respondent no. 6 deposited the auction amount and got the order in his favour of releasing of the property by filing an Appeal, which was registered as S.A. 41 of 2013 in which the present petitioner, who is a auction purchaser, was not made party.

The counsel for the Bank submits that the Bank has appeared and filed its reply mentioning therein that the property has been auctioned-sold and the sale has been confirmed. Right has been created to the 3rd party, even then the Tribunal did not feel inclined to implead the present petitioner as a party and passed the order without hearing the auction purchaser. When the 3rd party right has been created on account of auction sale, the Tribunal was obliged to hear all the parties including petitioner before passing any order in favour of Respondent nos. 6 and 7, may be the Respondent nos. 6 and 7 have very valid and good case that does not mean, the order will be passed without hearing the auction purchaser.

In such view of the matter, the order dated 15.03.2013 passed by the Presiding Officer, Debts Recovery Tribunal, Patna in S.A. 41 of 2013 is set aside and the matter is remanded back to the Tribunal for fresh hearing after giving notice to all the parties.

All the parties are directed to appear before the Tribunal on 18.02.2017. The Tribunal will try to dispose of the case within two months from 18.02.2017.

Any observation made in this order, will not be factor for consideration of the merit of the case.

Accordingly, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.01.2017
Transmission Date	