IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8634 of 2017

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Renu Devi, wife of Late Jayprasad Singh, resident of Village- Chamarahiya, P.S. Bishunpura Kalan, District- Saran.

.... Petitioner

Versus

1. The State of Bihar through District Magistrate, Patna, District- Patna.
2. The District Magistrate, Patna, District- Patna.
3. The Punjab National Bank having Corporate Office at 7, Bhikhaiji Cama Place, New Delhi- 110 607.
4. The Zonal Manager, Punjab National Bank, having its office at R- Block, Chanakya Tower, Chankya Place, Patna- 800001.
5. The Recovery Department Circle Office through its Chief Manager, Punjab National Bank, having its office at R- Block, 2nd Floor, Chanakya Place, Patna-800001.
6. The Chief Manager, The Recovery Department Circle Office, Punjab National Bank, having its office at R- Block, 2nd Floor, Chanakya Place, Patna- 800001
7. M/s Krishna Vermi Udyog through its Proprietor namely Surendra Kumar resident of Survey Plot No- 27, Agamkuan, P.S.- Agamkuan, District- Patna.
8. Kanti Devi wife of Nand Kishore Kumar resident of Survey Plot No- 27, Agamkuan, P.S.- Agamkuan, District- Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Sumeet Kumar Singh, dv.
For the Respondent/s : Mr. Kumar Samarjeet Singh, A.C. to S.C.-21

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 02-08-2017

Heard learned counsel for the parties.

Learned counsel for the petitioner is claiming that he is an auction purchaser of the property and, inasmuch as, he has already deposited the entire auction amount but, the Bank illegally has cancelled the auction sale and asked the petitioner to receive the amount which has been deposited by him.

It is an undisputed fact that one M/s Krishna Vermi Udyog had taken loan which was sanctioned on 29.3.2014, two accounts were opened i.e. Term Loan and Cash Credit, bearing 158000AC00000019 and 1580008600000091 respectively. One current account was also opened bearing account no. 1580002100001222. As the loanee could not deposit the loan amount, the account was declared N.P.A. The property, which was mortgaged with the Bank, was put to auction as provided under the SARFAESI Act, the petitioner deposited the amount but, before the sale certificate could have been issued to the petitioner, the borrower has approached to the Bank and deposited more than the amount that has been recovered in the auction sale and, in pursuance thereof, the Bank has cancelled the auction sale and intimated the petitioner to approach the Bank and collect the draft of the amount which he has deposited as an auction sale amount, thereby offered to pay back the money.

Learned counsel for the petitioner submits that the action of the Bank is completely illegal and not sustainable in law in view of the fact that he has already deposited the sale amount, there was no justification for the Bank to cancel the auction and offer to return the amount of the petitioner.

Learned counsel for the Bank has submitted that in the advertisement itself, it has been provided that the Bank can at any time cancel the auction itself and, in pursuance of the fact that when the borrower has come forward for payment of the said amount, he has every right to protect his own interest. It has further been stated at the Bar that the amount above than auction amount has been paid by the borrower and, as such, in such situation, the action of the Bank cannot be said to be illegal.

Having considered the rival contentions of the parties, it is an admitted fact that the petitioner had deposited more than the auction amount but, before issuance of sale certificate, the money has been deposited by the borrower before issuance of the sale certificate and, on that account, the action of the Bank giving the first preference to borrower proper exercise of power, enable the borrow to protect his own interest. The petitioner, in alternative, has claimed that the amount must include the interest, he cannot be deprived of the same.

Learned counsel for the Bank has submitted that the money i.e. the auction sale money, was kept in General Account, the period the money was kept in General Account, the petitioner is entitled to interest.

This Court directs the Bank to return the amount along with interest whatever earned by the principal amount.

With the aforementioned observation, this application is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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