IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10916 of 2013

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Md. Feroz Alam Son of Abdul Samad, resident of Village Deona, Police Station- Barauni, P.O. Tallath, District- Begusarai

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate-Cum-Certificate Officer, Begusarai
3. General Manager, State Bank of India, Begusarai
4. Chief Manager, State Bank Of India, Barauni Refinery, Township Branch, Tapasia Chowk, Begusarai

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ajay Prasad, Advocate
		Mr. Jyoti Shankar, Advocate
		Mr. Pradip Kumar Sinha
For the Bank	:	Mr. Kaushelendra Kumar Sinha, Advocate
For the State	:	AC to SC - 18

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

4 08-02-2017 The present application has been filed for quashing the 'Auction Sale Notice' published in daily Hindi Newspaper "Hindustan" on 4th of May, 2013 fixing a date for auction of the sale properties on 05.06.2013.

Being aggrieved by the aforesaid notice, the petitioner seeks a writ of certiorari for quashing the same, as according to him, it has been issued against the settled principles of law and the provisions of the SARFAESI Act.

Learned counsel appearing on behalf of the petitioner submits that the petitioner had applied for sanction of housing loan amounting to Rs. 5 lakhs from the respondent-Bank but the Bank had disbursed only Rs. 4.5 lakhs and the terms and conditions, as fixed by the Bank, was an installment of Rs. 5,000/- per month for 15 years so as to liquidate the borrowed amount. It is further submitted that due to certain unforeseen circumstances, the petitioner could not continue payment of the installment amounts and, therefore, in the year 2011-12, a Certificate Case No. 1/11-12 was filed by the Bank. It is further submitted that the petitioner filed his objection in the said certificate case before the respondent-Bank. It is further submitted that the petitioner has also received notice under Section 13(2) of the SARFAESI Act to which he filed his objection but before the same could be disposed off, the respondent-Bank had proceeded to issue notice under Section 13(4) of the said Act. In pursuance of the said possession notice, the petitioner came to this Court in the year, 2012 vide CWJC No. 20595 of 2012 which was disposed off on 14.03.2013. The operative portion of the order passed in the aforesaid writ application reads as hereunder.

> *" In the aforesaid view of the matter, the writ application is disposed of with a direction to the Certificate Officer, Begusarai to consider and dispose of the objection petition by*

the petitioners under Section 9 of the P.D.R. Act in Certificate Case No. 1 of 2011-12 within a period of four weeks from the date of receipt/production of a copy of this order.

Until orders are passed on the objection petition, no coercive steps shall be taken against the petitioner in the certificate proceeding.

So far as the SARFAESI proceeding are concerned, two weeks time is allowed to the petitioner to file their objection to the notice under Section 13(2) of the Act, which shall be considered and disposed of by the respondent Bank by a speaking order within a period of one week from the filing of the objection".

It is further submitted on behalf of the petitioner that the order clearly states that so far as the SARFAESI proceedings are concerned, he was allowed two weeks time to file his objection to the notice issued to him. Earlier, under Section 13(2) of the Act, the said objection was to be considered and disposed off by the respondent-Bank by speaking order within a period of one week from the filing of the objection. It is further submitted that by means of the same order, the Certificate Officer, Begusarai was also directed to consider and dispose off the objection petition filed by the petitioner under Section 9 of the

PDR Act in Certificate Case No. 1/11-12 within a period of four weeks from the date of receipt/production of a copy of this order. The said certificate case reached its finality vide Annexure-5 dated 16.04.2013. The Certificate Officer directed the petitioner to deposit 10,000/- per month for realization of the loan amount in the first week of each month. It was also directed that in case, the petitioner would not deposit the amount regularly, warrant of arrest would be issued against him. The petitioner has been depositing the amount stated in the said order regularly since the date of the order till January, 2017. So far as the order with regard to the petitioner filing his objection before the respondent-Bank is concerned, the petitioner filed his representation/objection on 06.04.2013 but the respondent-Bank, without disposing of his application, has passed the impugned order rejecting his objection, though no such rejection order was ever communicated to him. He, thus, submits that any action taken by the Bank without communicating/ rejecting his objection would again amount to an illegality and be contrary to the provisions of the SARFAESI Act and thus, stood vitiated.

With regard to the order passed by the respondent-Bank whereby auction notice dated 04.05.2013 was issued for auction of the mortgage assets of the petitioner with the respondent-Bank, the petitioner submits that such an action by the respondent-Bank is wholly against the spirit of the provisions of the Act and also the order passed by this Court and therefore, warrants, interference.

When the matter came before this Court earlier, this Court vide order dated 23.05.2013 had restrained the respondent-Bank from taking further steps in pursuance of the impugned auction sale notice dated 04.05.2013 (Annexure-1) in so far as it concerns the petitioner and as such, the stay of order is in operation till date.

Learned counsel appearing on behalf of the respondent-Bank submits that as per the provisions of law, the respondent-Bank proceeded to consider the representation of the petitioner and it was rejected vide order dated 13.04.2013 which was communicated to him on the same day vide peon book . It is further submitted that the peon book clearly reveals that the petitioner had declined to take notice of the order passed and communicated to him and therefore, no illegality has been committed in issuing the impugned auction notice. It is further submitted that the petitioner was a recalcitrant borrower and has been willfully evading payment of the borrowed amount and therefore, the Bank after giving repeated notice to him has proceeded to take recourse to and had filed the certificate case as well as proceeding under the SARFAESI Act against him for recovery of public money due to the bank. It is further submitted that any objection filed by the petitioner having been rejected and communicated to him, no illegality has been committed and therefore, the writ application and the case of the petitioner is not fit to be entertained as the impugned order is wholly, in accordance with law.

Having heard learned counsel for the petitioner, learned counsel for the Bank and after considering all the facts and circumstances of the case, it appears that the petitioner, after the last order was passed, had cooperated in both the proceedings. It further appears that in the certificate case, the order was passed for making the payment which is being duly complied with by the petitioner. As submitted by the petitioner, he has already deposited a sum of Rs. 5,90,000/- till January, 2017. So far as illegality with regard to the violation of the provisions of the SARFAESI Act is concerned, this Court finds that the contention of the petitioner that both the proceedings cannot continue together untenable in view of catena of decisions of this Court as well as the Apex Court.

However, so far as the communication of the rejection/objection order is concerned, this court finds that there has been insufficient compliance of the provisions of law as a mere entry in a peon book without any affidavit to support such an entry by the concerned peon would not suffice to indicate a communication of the rejection order to the petitioner. The appropriate method to have been adopted by the Bank would be a communication of the rejection order by means of registered post or by publication.

The submissions advanced by learned counsel for the Bank, stating that there being no specific statement to the said effect in Section 13(3)(c) regarding communication of the order by means of registered post, the bank is not required to send registered communication so is fit to be rejected as communication by means of peon book would not suffice. This Court, is thus, not inclined to accept such submissions and the same is accordingly, rejected.

This Court while rejecting the stance of the respondent can well infer that there was no proper communication in accordance with law even if there was no specific provision in Section 3(c) of the Act regarding communication by the registered post, it can well be inferred that the provisions of Section 27 of the General Clause Act would be applicable which is as follows:-

> 27. *"Meaning of Service by post – Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document , and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".*

Having heard the parties and on consideration of all facts and circumstances of the case, this Court is of the considered opinion that impugned order stands vitiated on account of non-communication of the earlier order of rejection to the petitioner under Section 13(2) of the SARFAESI Act. Thus, order as contained in Annexure-1 being the Auction Sale Notice dated 04.05.2013, in so far as it relates to the present petitioner is quashed and the impugned notice is set aside.

However, it will be open to the respondent-Bank to take appropriate legal remedies in accordance with law under the provisions of the Act after due compliance of the relevant provisions of the SARFAESI Act.

The writ application is allowed.

However, in the facts and circumstances of the case there shall be no order as to costs.

(Anjana Mishra, J)

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