IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9191 of 2016

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1. Nikhil Priyadarshi, S/o Krishna Bihari Prasad Sinha, R/o Plot No.11, Vishwasaraiya Nagar, Bailey Road, Danapur, PS Rupaspur, District Patna-801503
2. Priyadarshi Motors Private Limited, though its Managing Director, Nikhil Priyadarshi, Plot No. 11, Vishwasaraiya Nagar, Bailey Road, Danapur, PS Rupaspur, District Patna-801503

.... Petitioners

Versus

1. The State Bank of India, through the Chief General Manager, SAMB, State Bank of India, Main Branch, Mumbai.
2. The Chief Manager, S.M.E. Branch, State Bank of India, Dakbunglow Road, Patna.
3. The Authorised Officer, Stressed Assets Management Branch, State Bank of India, 5th Floor of Zonal Office Building, Judges Court Road, Anta Ghat, Patna.-800001

.... Respondents

With

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Civil Writ Jurisdiction Case No. 9192 of 2016

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1. Manish Priyadarshi, S/o Krishna Bihari Prasad Sinha, R/o-Plot No.11, Vishwasariya Nagar, Bailey Road, Danapur, P.S.- Rupasur, District Patna-801503.
2. Priyadarshi Purnanand Automobile Private Ltd. through its Managing Director, Manish Priyadarshi -Plot No. 11, Vishwasariya Nagar, Bailey Road, Danapur P.S.- Rupasur District Patna-801503

.... Petitioners

Versus

1. The State Bank of India, through the Chief General Manager, SAMB, State Bank of India, Main Branch, Mumbai.
2. The Chief Manager, S.M.E. Branch, State Bank of India, Dakbunglow Road, Patna.
3. The Authorised Officer, Stressed Assets Management Branch, State Bank of

India, 5th Floor of Zonal Office Building Judges, Court Road , Anta Ghat, Patna.-800001

.... Respondents

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Appearance:

(In CWJC No. 9191 of 2016)

For the Petitioner/s : Mr. Om Prakash Kumar, Adv.
Mr. Abhay Shankar, Adv.
For the Respondents: Mr. Sanjiv Kumar, Adv.

(In CWJC No. 9192 of 2016)

For the Petitioner/s : Mr. Om Prakash Kumar, Adv.
Mr. Abhay Shankar, Adv.
For the Respondents Mr. Sanjiv Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
COMMON ORAL JUDGMENT
Date: 06-02-2017

Heard learned counsel for the petitioners and learned counsel for the Bank.

2. In the present case, the petitioners are challenging the notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "*the SARFAESI Act*"), making a plea that the respondent-Bank without complying the provisions of Section 13(2) of the SARFAESI Act has issued notice under Section 13(4) of the Act for taking possession of the secured property.

3. As in both these cases the facts are identical they are being disposed of by this common judgment. For convenience, the facts of C.W.J.C. No.9191 of 2016 will be discussed by this Court.

4. The respondent-Bank has provided Cash Credit Facility of Rs.43,27,48,878.98/- and Stand by Line of Credit (S.L.C.) of Rs.3,26,17,042.22/- to the petitioner on 27.09.2014. The Bank account of the petitioner was declared as N.P.A. on account of non-deposit of installments. As per the claim of the Bank, they have issued the notice under Section 13(2) of the SARFAESI Act on 07.10.2015, calling upon the petitioner to file Objection or to pay the outstanding dues of Rs.46,53,65,921.20/- within 60 days and the said notice was sent through Speed Post on 12.10.2015.

5. As per the claim of the Bank when the petitioners did not respond, the notice under Section 13(4) of the SARFAESI Act has been issued on 16.05.2015 to the petitioner and the said notice was also sent through the Speed Post on 18.05.2016.

6. To fortify the stand of service of notice the Bank has attached a letter dated 6.7.2016 in the counter affidavit, seeking information from the Senior Post Master, Post Office, Dananpur, in which the name of the petitioner is also standing about the service of notice, whereupon the Post Master has given the note "above mentioned eight SPAs were delivered on 14.10.2015."

7. Learned counsel for the petitioner submits that the petitioner has not received any notice except the notice under Section 13(4) of the SARFAESI Act. He further submit that it is *sine quo non* that before issuing the notice under Section 13(4) of the SARFAESI Act, the authority was obliged to give the notice under Section 13(2) of the SARFAESI Act and disputed the service of notice upon him. He also submits that this letter dated 6.7.2016 does not clarify that the notice was served upon the petitioner.

8. In stead of going for deciding the issue regarding service of notice upon the petitioner, it will be in the interest of justice and equity, let the petitioner file his Objection, treating the notice dated 7.10.2015 as a notice under Section 13(2) of the SARFAESI Act within a period of 45 days from today. If such an objection is filed by the petitioner with the aforesaid period, the Bank authority shall consider his objection and take action in accordance with law. It is clarified that if the petitioner does not take any step in terms of this order, the Bank will be at liberty to take action in accordance with law.

9. Status quo as on today will be maintained by both the parties till the disposal of the Objection filed by the petitioner.

10. With the aforesaid observations and directions, both these writ applications are disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.02.2017
Transmission Date	