IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8280 of 2017

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Pramod Kumar S/o Sri Sita Ram Singh R/o West Of Mishra Market Vivek Vihar Hanuman Nagar, P.S. Patrakar Nagar, P.O.-Bahadurpur, District-Patna

.... Petitioner/s

Versus

1. The Union of India through Secretary Department of Commerce and Industries, New Delhi.
2. General Manager, Punjab National Bank with its Head Office at Bhikaji Cama Place, Delhi-110066.
3. Chief Manager cum Authorized Officer, Recovery Department and Circle Officer Patna at "R' Block 2nd Floor at Chanakya Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey, Adv.
For the Bank : Mr. Kumar Priya Ranjan, Adv.
For the Union of India : Mr. Shyam Bihari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-07-2017

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 and 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 payment to 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 entire 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 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 auction sale has been cancelled. This court does not find any error in the action of the Bank or the action of the borrower as the first preference will be given to the borrower to protect his own interest. He has taken the loan and he has already deposited the same. The petitioner, in alternative, has claimed that the amount must include the interest amount and he cannot be deprived of the same.

Learned counsel for the Bank has submitted that the money i.e. the auction sale money, for some period, was kept in the sundry account which does not earn any interest but, for certain period the money was kept in General Account, the period the money was kept in General Account, the petitioner is entitled to interest but, the period money is kept in Sundry Account, this Court cannot given direction for interest.

This Court is of the view that if the petitioner is entitled to the interest, he must approach to the Bank or any authority for the aforesaid grievance.

With the aforementioned observation, this application is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA