

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.434 of 2017

In

Civil Writ Jurisdiction Case No.5881 of 2013

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Sawalia Singh, Son of Late Durga Singh, Resident of Rajput Colony, Road No. 3, House No. 113, Hajipur, P.S.- Industrial Area, Hajipur, District- Vaishali.

... .. Appellant/s

Versus

1. M/s Farm Solutions Trading Pvt. Ltd., Regd. Office & Factory at Maniyarpur, District- Vaishali, Bihar through Rajesh Singh, Managing Director, Son of Late Ram Kumar Singh, Resident of 217, Surya Triveni, New Patliputra Colony, P.S.- Patliputra, District- Patna- 13.
2. State Bank of India through Deputy General Manager, Stressed Assets, Management Branch (SAMB), Judges Court Road, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 482 of 2017

In

Civil Writ Jurisdiction Case No.5881 of 2013

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State Bank of India through Dy. General Manager, Stressed Assets Management Branch (SAMB), th Floor, Zonal Office Building, Judge's Court Road, Patna.

... .. Appellant/s

Versus

1. M/s Farm Solutions Trading Pvt. Ltd. Regd. Office & Factory at Maniyarpur, Dist.-Vaishali, Bihar through its Director, Rajesh Singh S/o Late Ram Kishore Singh, R/o 217, Surya Triveni, New Patliputra Colony, P.S.-Patliputra, Dist.- Patna-13
2. Sri Sawalia Singh, aged about 71 years, S/o Late Durga Singh, Resident of Rajput Colony, Road No.3, House No. 113, Hazipur, P.S.-Industrial Area, Hazipur, Dist.-Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Aditya Sharan, Advocate Mr. P.K. Shaxan, Advocate Mr. J.K. Shaxan, Advocate Mr. H.K. Shaxan, Advocate Mr. Dr. Binay Singh, Advocate Mrs. Aditya Sharma, Advocate
For the Respondent/s	:	Mr. Arbind Kumar Jha, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 30-01-2018

Both these appeals filed under Clause 10 of the Letters Patent arise out of a common order passed on 06.02.2017 in C.W.J.C. No. 5881 of 2013 and, therefore, are being disposed of by this common order.

L.P.A. No. 434 of 2017 is by the auction purchaser Sawalia Singh and L.P.A. No. 482 of 2017 is filed by the bank in question. Respondent M/s Farm Solutions Trading Pvt. Ltd. filed the writ petition in question and it was their case before the Writ Court that after prolonged proceedings held finally on 10.05.2012 in O.A. No. 08 of 2011 the Debt Recovery Tribunal had issued a direction wherein it was directed that on the petitioner M/s Farm Solutions Trading Pvt. Ltd. depositing the amount and in terms of the order according to his own calculation the documents be returned to him.

Inter alia contending that inspite of the aforesaid order the documents are not being released, the writ petition in question was filed. The Writ Court having allowed the writ petition, directed for return of the documents, therefore, this appeal by the Bank and the auction purchaser on various



grounds, primarily by contending that as certain miscellaneous appeals in the matter are pending before the Debt Recovery Appellate Tribunal at Allahabad and in interfering with the matter at this stage when the appeal is pending an error has been committed.

We find that the learned Writ Court has taken note of all these objections raised by the Bank and the intervenor and has dealt with in the following manner:-

“Having considered the rival contentions of the parties, it is an admitted fact that the order dated 10.5.2012 in OA No. 08 of 2011 by which a direction was given as mentioned hereinabove to the present petitioner to deposit the amount and in terms of the order, according to his own calculation, the petitioner has deposited the amount in the Bank and the aforesaid order has not been challenged before any authority, forum or court rather the Bank adopted the recourse of filing a modification application which has been dismissed on two occasions and the matter is pending before the Appellate Authority.”

Thereafter, the right of redemption of a mortgaged property and the law laid down by the Supreme Court has been discussed in extenso by the learned Writ Court and finally the



direction issued is that in the facts and circumstances of the case it would not be proper for the Writ Court to decide the right that has accrued to the intervenor on purchase of the auctioned property, as the same is pending consideration before the Appellate Authority. However, the Writ Court found that the fact remains that on 10.05.2012 in O.A. No. 08 of 2011 the direction was to return the documents and after considering all the aforesaid position, the following directions have been issued:-

“In that view of the matter, in the present case, it is an admitted fact that while taking loan, the petitioner had deposited security documents for the purpose of loan and in terms of the order passed by the Tribunal, the petitioner has already returned the amount to the Bank, in such a situation, it is directed that the Bank should return the security documents of the petitioner with the condition in the event the Bank or the Intervenor purchaser succeeds at the appellate stage, in that circumstances, the present petitioner will be equally liable to return back the security documents whatever he has received from the Bank.”

In our considered view, the learned Writ Court has not committed any error in passing the aforesaid conditional order. That apart, in case the appellants move the Appellate Tribunal where the matter is pending, the Appellate Tribunal



shall be free to pass such interlocutory order as it may deem proper with regard to the issue in question and the order passed in the writ petition, as detailed hereinabove, shall not come in the way of the Tribunal in dealing with the issue independently.

With the aforesaid, the Letters Patent Appeals stand disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

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