IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3359 of 2018

==

Sanjay Kumar Roy @ Sanjay Roy, S/o Late Satish Rai, M/S S.R. Enterprises, Resident of Mohalla- Rambagh Lane, besides Makhan Bhog behind P.P. Road, Buxar District- Buxar.

.... Petitioner

Versus

1. Senior Branch Manager, Bank of Baroda, Buxar Branch, near Police Chouki No.1, Main Road, P.S. Buxar Town, District- Buxar.
2. Authorized Officer, Bank of Baroda, Buxar Branch, near Police Chouki No. 1, Main Road, P.S. Buxar Town, District- Buxar.

.... Respondents

==

Appearance:

For the Petitioner : Mr. Bachan Jee Ojha, Advocate

For the Respondents : Mr. Nishi Nath Ojha. Advocate

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-03-2018

The present writ petition has been filed for quashing the possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') dated 03.11.2017 issued by the Authorized Officer, Bank of Baroda, Buxar Branch, near Police Chouki No. 1, Main Road, P.S. Buxar Town, District-Buxar (respondent no. 2).

2. This matter has been taken up out of turn today on the request of learned counsel for the petitioner on the ground that the auction sale of his mortgaged property has been fixed to be held on 18.03.2018.

3. Learned counsel fort he petitioner submits that pursuant to notice under Section 13(2) of the SARFAESI Act issued on 12.07.2017 the petitioner filed his objections on 05.08.2017, but without considering the same, the impugned possession notice under Section 13(4) of the SARFAESI Act dated 03.11.2017 has been issued and the respondent-

bank is proceeding for auction of the petitioner's mortgaged property which is wholly arbitrary and illegal .

4. This Court takes note however, that instead of availing of the statutory remedy against the notice under Section 13(4) of the SARFAESI Act, the petitioner has straightaway rushed to this Court. Moreover, on the petitioner's own saying the respondent-bank has not acknowledged the receipt of the petitioner's objection petition dated 05.08.2017 in response to the notice under Section 13(2) of the SARFAESI Act.

5. In the above circumstances, the writ petition is disposed of granting liberty to the petitioner to file an appropriate appeal before the Debts Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act. If any such appeal is filed within a period of forty-five days from today, even if the mortgaged property is auctioned in favour of a third party, the same shall not be confirmed for a period of 60 days to enable the petitioner to seek further remedy before the Debts Recovery Appellate Tribunal (DRAT).

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2018
Transmission Date	NA