

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5249 of 2018

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M/s Shankar Shri & Sons Cold Storage Pvt. Ltd., Regd. Office & Cold Storage Sri
Rampur Ayodhya Pusa Road, P.O. Waini, PS- Pusa, District- Samastipur (Bihar).

.... Petitioner

Versus

1. State Bank of India, Stressed Assets Management Branch 5th Floor, Zonal Office Building, J C Road, Patna- 800001.
2. State of Bihar through Principal Secretary, Department of Finance, Patna, Bihar.
3. District Magistrate, Samastipur, Government of Bihar.

.... Respondents

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Appearance:

For the Petitioner:	Mr. Praveen Kumar, Advocate Mrs. Madhuri Kumari, Advocate
For the Respondent Bank:	Mr. Aditya Sharan, Advocate Mr. Prabhat Kr. Sharan, Advocate Mr. Hemant Kr. Sharan, Advocate
For the State:	AC to SC22

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-04-2018

Heard learned counsel for the petitioner and learned
counsel for the respondent-bank.

2. The present writ petition has been filed for the following
reliefs__

- (i) *For issuance of a writ of mandamus or any other appropriate writ setting aside order dated 27.01.2018 in SARFAESI Case No. 18 of 2017 passed by the District Magistrate, Samastipur;*
- (ii) *For issuance of writ of mandamus directing the respondents to withdraw the proceedings under SARFAESI Act, 2002 and regularize the loan account of the petitioner;*
- (iii) *For issuance of writ of mandamus or any other appropriate writ granting stay on the impugned*



order dated 29.01.2018 during the pendency of the present writ petition;

- (iv) *For issuance of writ of mandamus or any other appropriate writ granting stay against taking of possession of the immovable and movable assets of the petitioner company including the Cold Storage during the pendency of the present proceeding;*
- (v) *For any other relief as deemed fit by this Honourble Court.*

3. Learned counsel for the petitioner has raised a number of grounds to assail the jurisdiction of the District Magistrate, Samastipur to pass the impugned order dated 27.01.2018 in SARFAESI Case No. 18 of 2017, *inter alia*, directing the Circle Officer, Pusa to fix a date for taking physical possession of the subject properties of the petitioner. It is submitted that the District Magistrate was required to satisfy himself in terms the 2nd proviso to Section 14(1) with regard to the contents of the affidavit accompanying the bank's application, more particularly that the borrower had committed default in repayment of the financial assistance aggregating the specified amount, and that consequent upon such default in repayment of the financial assistance, the account of the borrower had been classified as a non-performing asset. It is further submitted that in view of the restructuring of the loan on 30.12.2014, the declaration of the



account of the petitioner as non-performing asset the very next day on 31.12.2014 was itself wholly arbitrary and illegal. More significantly, from the documents supplied to the petitioner upon applying in the office of the District Magistrate for a certified copy of the entire records relating to SARFAESI case No. 18 of 2018, it appeared that the requisite affidavit accompanying the bank's application had not been filed.

4. Learned counsel for the respondent-Bank, on the other hand, vehemently opposes the writ petition submitting at the very outset that the petitioner had already availed remedy of appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. By judgment dated 19.02.2018 in S.A. No. 177 of 2017, the petitioner's appeal stood dismissed. It is further stated that the bank's application had been duly accompanied with the requisite affidavit before the District Magistrate, in support of which a copy of such affidavit has been enclosed with the supplementary counter affidavit. A categorical statement has also been made in para 40 of the counter affidavit in the following terms —

“40. That the question of staying the physical possession cannot be considered on account of lease/agricultural property at the instance of the Petitioner/Borrower. As the Respondent Bank itself is not going to take any physical possession over the lease hold property upon which the Cold Storage is running, as there is a separate provision of takeover of the management of the business nor any action



is going to be taken against the agriculture property. The Respondent is well aware that agriculture lands are exempted U/s 31(i) of the Security Interest Act, 2002. For realization of the loan from the agriculture land the Respondent Bank had already initiated the action through the Debt Recovery Tribunal by filing an Original Application No. 470/2017, which is under knowledge of the Petitioner, as they appeared and filed their Written Statement and final hearing is going on, as the next date is fixed on 20.04.2018, for hearing.”

5. Having heard the parties and on a consideration of the materials on record, this Court does not find it necessary to enter into the controversy whether or not the Bank's application to the District Magistrate was accompanied by the requisite affidavit. In the facts and circumstances of the case, the ends of justice will be met if the concerned authorities are directed to have regard to the averments contained in para 40 of the supplementary counter affidavit as reproduced above and act accordingly while resorting to any action pursuant to the impugned order dated 27.01.2018 passed by the District Magistrate, Samastipur.

6. Needless to say, the petitioner shall also be at liberty to seek redressal of its grievance at any stage before such forum as may be available to it in accordance with law.

7. The writ petition stands disposed of.

(Vikash Jain, J)



Chandran/BT

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2018
Transmission Date	NA

