IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8 of 2018

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Krishna Mistri, son of Late Beni Mistri, resident of Mohalla - Ram Lakhan Path, Vishnupuri Chitkohra, P.S. Gardanibagh, District - Patna.

.... Petitioner

Versus

1. The Chief Manager, Zonal Office, Corporation Bank, Chunni Plaza Complex No. 3, Near N.M.C.H. Kankarbagh, Patna.
2. The Branch Manager, Corporation Bank, Chunni Plaza Complex No. 3, Near N.M.C.H. Kankarbagh, Patna.
3. Ranjeet Kumar, son of Sri Vijay Bahadur Ray, resident of Mohalla - Goria Toli, P.O. Badru Tola, P.S. Chapra Muffasil, District - Saran presently residing at Cool Fashion, Shop No. 2, Ground Floor, Hotel City Centre, Station Road near Veena Cinema, P.S. Kotwali, District Patna.
4. Mithilesh Kumar, son of Sri Ravindra Prasad, resident of Mohalla - Ram Lakhan Path, Vishnupuri Chitkohra, P.S. Gardanibagh, District - Patna.

.... Respondents

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Appearance :
For the Petitioner : Mr. Vinay Mistry, Advocate
For Respondent-Bank : Mr. Vivek Kumar Verma,
Mr. Abhishek Anand, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 13-03-2018

This matter has been taken up out of turn on the request of learned counsel for the petitioner in view of the auction sale of his property to be held today.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

3. The present writ petition has been filed for the following reliefs –

> *"(i) For issuance of a writ in the nature of Certiorari for quashing of Notice dated 28.08.2017 issued by the respondent no. 2 under Section 13(2) read with Section 13(3) of the Securitization and Reconstruction of*

Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002") whereby the petitioner (Guarantor) and the respondent no. 3 (Borrower) have been asked to pay the standing balance amounting to Rs. 25,12,099/- within 60 days from the date of this notice failing which the Bank shall be entitled to exercise all or any of the rights under Section 13(4) of the SARFAESI Act, 2002 as the petitioner is not the guarantor of the respondent no. 3 in the facts and circumstances of the case.

(ii) For issuance of a writ in the nature of Mandamus directing the respondents not to take any coercive action against the petitioner with regard to the so-called mortgage land as described in the aforesaid notice till the disposal of the present writ application.

(iii) For issuance of such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper."

I.A. No. 1906 of 2018

4. The interlocutory application has been for quashing of the Auction Notice dated 07.02.2018 (Annexure-1) issued by the Chief Manager, Zonal Office, Corporation Bank, Patna whereby the Immovable Secured Assets have been taken possession by the Authorized Officer, will be sold by holding Public E-Auction on 13.3.2018 at 11.45 AM to 1.15 PM by inviting bids from the public.

5. Having regard to the nature of the prayer, the interlocutory application is allowed and the same shall be treated as forming part of the writ petition.

6. Learned counsel for the petitioner submits that the petitioner is neither guarantor nor borrower as he has been shown as guarantor in collusion with the private respondents. It is therefore submitted that auction sale of the petitioner's property will cause irreparable loss and injury to him. It has specifically been denied that the petitioner had mortgaged the subject land for sanction of loan to the respondent no. 3 with whom he is not acquainted and all these facts were duly stated in the reply to the aforesaid notice under Section 13(2) of the SARFAESI Act in the form of Legal Notice. It is stated that the petitioner's objection however has not been enquired into by the Bank and instead the respondent-Bank is proceeding with the auction of the petitioner's property for recovery of an amount of Rs. 25,54,697/- which is wholly arbitrary and illegal. It is stated that the respondent-Bank has filed O.A. No. 37 of 2018 for recovery of the outstanding dues against the borrower and the petitioner.

7. Learned counsel for the respondent-Bank appears and has been heard.

8. Having regard to the nature of the grievance of the petitioner, this Court is of the view that the petitioner be directed to appear before the Debts Recovery Tribunal, Patna in O.A. No. 37 of 2018 and file his objection before it as the notice has already been served upon him. The petitioner undertakes to file his objection before the Debts Recovery Tribunal within a period of two weeks from today.

The auction scheduled to be held today may proceed but the sale shall not be confirmed for a period of one month to enable the petitioner to seek redressal of his grievance in this regard before the Debts Recovery Tribunal, Patna.

9. The writ petition accordingly stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.03.2018
Transmission Date	N.A.