

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18599 of 2017

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Manish Madhav Son of Shiv Shankar Prasad Resident of Tower Chowk
Darbhanga , P.S. Darbhanga Town District Darbhanga.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary Finance Department.
2. The Central Bank of India, Darbhanga.
3. The Deputy Regional Manager-Cum-Authorized Officer, Regional officer,
Central Bank of India, at & P.O. Darbhanga, District Darbhanga.
4. The District Magistrate, Darbhanga at & P.O. Darbhanga, District Darbhanga.
5. The Circle Officer, Darbhanga at & P.O. Darbhanga, District Darbhanga.
6. Raj Kumar Prasad @ Raj Kamal Prasad Son of Sri Ram Chandra Prasad
Resident of Mohalla Bakarganj, P.S. Laherisarai, District Darbhanga.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Narayan, Sr. Advocate
Mr. Shambhu Nath Jha, Advocate
For Respondent-Bank : Mr. Ajay Kumar Sinha, Advocate
For the State : Mr. Anuj Kumar, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-01-2018

The present writ petition has been taken up out of turn on
the request of learned counsel for the petitioner for disposal of the
same with a liberty to the petitioner to deposit the outstanding dues of
the respondent-Bank

I.A. No. 05 of 2018

2 The interlocutory application has been filed for quashing
the order issued by the Circle Officer, Sadar, Darbhanga vide his Memo
No. 1985 dated 29.12.2017 by which the petitioner has been directed
to hand over the physical possession of the immovable property i.e. his
residential house to the authorized officer of Central bank of India,
Regional Office, Darbhanga, by 09.01.2018 failing which the petitioner
shall be forcibly dispossessed from the aforesaid immovable property



on 10.01.2018 and the expenses incurred upon the said dispossession will also be recovered from the petitioner.

3. Having regard to the nature of the prayer, the I.A. No. 05 of 2018 is allowed and the same shall form part of the writ petition

C.W.J.C. No. 18599 of 2017

4. Heard learned senior counsel for the petitioner, learned counsel for the respondent-Bank as well as learned counsel for the State.

5. The writ main petition has been filed for the following reliefs –

“(i) To issue appropriate writ/order/direction to restrain the respondents authorities especially respondent no. 4 from taking possession of the secured asset till disposal of the SARFAESI Appeal No. 87 of 2017 pending before the Debts Recovery Tribunal, Patna

(ii) To stay the operation of order dated 04.11.2016 till disposal of SARFAESI Appeal No. 87 of 2017 passed by the District Magistrate, Darbhanga, by which the Circle Officer, Sadar Darbhanga has been appointed as Magistrate to deliver the physical possession of the secured properties.

(iii) To issue appropriate writ/order/direction directing the Debts Recovery Tribunal, Patna to decide the SARFAESI Appeal No. 87 of 2017 as per direction of this Court Hon’ble Court passed in CWJC No. 518 of 2017.

(iv) Any other relief or reliefs for which the Hon’ble Court may deem appropriate to grant under the facts and circumstances of the case.”

6. Mr. Rajendra Narayan, learned senior counsel for the petitioner, vehemently submits that the impugned order dated



29.12.2017 issued by the Circle Officer, Sadar Darbhanga requiring to vacate the subject premises under threat of forcible dispossession of the petitioner is arbitrary and has been passed in undue haste. He invites attention to the judgment dated 18.04.2017 passed by this Court in the petitioner's earlier CWJC No. 518 of 2017 (*Manish Madhav & anr. Vs. The State of Bihar & ors.*) (Annexure-4) which was disposed of on the following terms –

"9. In such view of the matter, let the petitioners exhaust the alternative remedy by filing appeal before the D.R.T. under section 17 of the S.A.R.F.A.E.S.I. Act. and take all the points which will be available to them. If they do so, the Tribunal will be obliged to consider the same and decide the case of the petitioners in accordance with law as the petitioners are claiming that auction sale has not been done in terms of the judgment of the Hon'ble Supreme Court in the case of Mathew Varghese v. M. Amritha Kumar, reported in 2014 (5) SCC 610 and Vasu P. Shetty vs. Hotel Vandana Palace and Ors. Reported in 2014(5) S.C.C. 660.

10. At this stage, it has been informed by learned counsel for the Bank that the father of the petitioners has also challenged the action of putting the property in auction. Let the petitioners also join the father by filing appeal before the Tribunal. If such an appeal is filed, the case of the petitioners and the case of the father will be joined together and will be decided by the Tribunal through the common order. The interim relief granted to the petitioners stands vacated.

11. With the aforesaid observations and directions, this writ application is disposed of."



7. Pursuant to the aforesaid judgment, the petitioner duly filed SARFAESI Appeal No. 87 of 2017 in which all the concerned parties have appeared and the matter has been heard on 05.08.2017. The final order is awaited from the Debts Recovery Tribunal. In the meantime, respondent no. 5 has issued the impugned notice (Annexure-5) for dispossession of the petitioner from his house.

8. Learned counsel for the respondent-Bank equally vehemently opposes the writ petition, submitting that the petitioner has been obstructing recovery of the outstanding dues on one pretext or the other for a number of years. He invites attention to the respondent-Bank's letter dated 24.04.2014 (Annexure-2) which discloses that the property in question was auctioned in the year 2014 itself and one Raj Kumar Prasad @ Raj Kamal Prasad (respondent no. 6) being the highest bidder had deposited the bid amount of Rs. 45.25 Lacs with the Bank. Accordingly, the sale certificate in his favour had been issued on 16.04.2014. It would further appear that the respondent-Bank moved the District Administration for assistance in obtaining the physical possession of the property in the year 2014 itself upon which the District Magistrate by order dated 04.11.2016 (Annexure-3) directed the Circle Officer, Sadar Darbhanga to take appropriate action in that regard.

9. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court is



not inclined to interfere in the matter. It is not in dispute that the District Magistrate, Darbhanga by his order dated 04.11.2016 (Annexure-3) directed the Circle Officer to take action for taking physical possession of the property in question and in pursuance of such order, the Circle Officer has passed the impugned order dated 29.12.2017 (Annexure-5). The petitioner seeks interim protection in view of the fact that his appeal has already been heard by the Debts Recovery Tribunal and orders awaited thereon. However, the petitioner has not been able to bring any material on record to show that he approached the Debts Recovery Tribunal for stay of coercive action in the backdrop of the existing order dated 04.11.2014 passed by the District Magistrate at any stage. Significantly, this Court did not entertain the petitioner's earlier writ petition (CWJC No. 518 of 2017) on merits in view of the alternative remedy available to the petitioner before the Debts Recovery Tribunal, Patna and specifically vacated the interim relief which had been granted to the petitioner. On filing of the appeal thereafter, it was for the petitioner to take steps for obtaining interim protection against any coercive action as might be taken by the authorities particularly in the backdrop of the order dated 04.11.2016 which had not been interfered with by this Court, rather the interim protection earlier granted by it was vacated. Despite being specifically required, the petitioner has not been able to shed light on the nature and contents of the appeal filed before the Debts Recovery Tribunal, Patna. Petitioner has not satisfied the Court regarding



payments made. The auction purchaser, on the other hand, has deposited Rs. 45,00,000/- and sale certificate issued in his favour but has been denied the fruit of the same.

10. It is well settled that this Court has to act with great circumspection in matters involving recovery under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and equities have to be balanced between the contending parties. In the instant case, the petitioner has failed to make out a satisfactory case for interference by this Court.

11. The writ petition accordingly stands dismissed.

B.T/Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.01.2018
Transmission Date	N.A.

