IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.184 of 2016

==

1. Shri Ram Ashish Singh son of Shri Kamla Singh
2. Smt Shiv Dulari Singh D/o Shri Gandhi Singh Both are resident of Ashok Nagar, Road No. 9 (Corner), Kankarbagh, East of Dwarika College, Patna-20

.... Petitioner/s

Versus

1. Central Bank of India through Regional Manager Central Bank of India, Regional Office B Block, Maurya Lok Complex, Patna-1.
2. The Authorized Officer, Central Bank of India, Regional Office, Maurya Lok Complex, Patna-1
3. The Branch Manager, Central Bank of India, Hawganj Branch, Patna City, Patna
4. Rahamatullah son of Nabi Hassan, proprietor of M/s R.T. Enterprises, Resident of Kadam Kuan, Patliputra Building, Police Station- Kadam Kuan, Post Office- Kadam Kuan, District- Patna

.... Respondent/s

==

Appearance :
For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.
For the Respondent/s : Mr. Ajay Kumar Sinha, Adv.
Ms. Manju Jha, Adv.
For the Resp. No. 4 : Mr. T.N. Matine, Sr. Adv.
Md. Hamid Akhtar, Adv.

==

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
Date: 23-07-2018

Heard learned counsel for the petitioners, learned counsel for the private respondent no. 4 and learned counsel for the respondent, Central Bank of India.

The petitioners by the present writ application seeks quashing of the order dated 01.05.2015 passed in S.A. No. 101 of 2014 as contained in Annexure-9 by the learned Presiding Officer, DRT, Patna whereby the application has been dismissed on the ground that the possession of the land has been delivered to the respondent no. 4 as per orders of this Court passed in C.W.J.C. No. 19421 of 2012.

Learned counsel for the petitioners submit that they had purchased land admeasuring 1 katha appertaining to Khata No. 570, Khesra No. 172, Tauji No. 184, Thana No. 12 bounded by Mahavir Gope on north, east Kapildeo Yadav, west boundary Daud Bigha and south part of plot no. 172 through registered deed dated 30.10.1985. One Satish Kumar had purchased an area of 6.38 decimals bounded by Thana No. 12, Plot No. 570, part of Khata No. 169/172/158, Tauji No. 814, bounded by north, Mahavir Gope, south Devi Gope, east Sheikh Nasrul Haq, west Daud Bigha through registered sale deed dated 03.05.1987 through four persons namely Alam Ara, Hasina Khatoon, Noor Jahan and Imam Raza. However, three plots were not contiguous but separated by plot no. 170. The said Satish Kumar had availed loan from the respondent Bank by creating equitable mortgage of his landed property. Subsequently, the loan account became NPA and auction sale notice was published fixing the date of auction on 28.06.2011. The respondent no. 4 one M/S R.T. Enterprises through his proprietor was the highest bidder and sale certificate was issued in his favour. On his failure of getting physical possession, he preferred C.W.J.C. No. 19421 of 2012 before this Court and after various deliberations by this Court in the said writ application, the writ application was disposed off on 17.12.2013 which is Annexure-8 to the writ application when a Panchanama was prepared and possession was taken by the respondent no. 4 of the land on 13.12.2013 after the local measurement by the Amin. Learned counsel for the petitioners further submits that part of the property belongs to him but since the possession was given to the respondent no. 4 by the order of this Court the learned Presiding Officer, DRT dismissed his S.A. No. 101 of 2014. He submits that as per Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002'), the civil court in matters under the SARFAESI Act will have no jurisdiction. In this regard, he refers to a judgment of the Apex Court in the case of **M/S Sree Anandhakumar Mills Ltd. Vs. M/S Indian Overseas Bank & Ors., Civil Appeal No(s). 7214-7216 of 2012** decided on 3rd May, 2018 that in SARFAESI matters the jurisdiction of the civil court is barred as per the provisions of Section 34 of the SARFAESI Act. He further refers to the decision of **Union Bank of India Vs. Satyawati Tondon, since reported in (2010) 8 SCC 110** stating therein that any person aggrieved against the notice issued under Section 13 (4) or auction taken under Section 14, may avail the remedy as provided under Section 17 (1) and relevant being para-42 which is quoted hereinbelow:

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13 (4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17 (1). The expression "any person" used in Section 17 (1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13 (4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

He further refers to the case of **Standard Chartered Bank v. V. Noble Kumar & Ors., since reported in 2013 (9) SCC 620** stating therein that it was very much within the right of the petitioners to avail its remedy before the DRT and that his S.A. ought not to have been dismissed on the threshold.

However, learned counsel appearing on behalf of the respondent no. 4 submits that he was the successful auction purchaser responding to the auction notice published by the Bank and now the right, title and interest has passed over to him, however, with the intervention of this Court. He further submits that the original borrower Satish Kumar has not been made party to the present application who was a necessary party and the writ is fit to be dismissed on the ground of non-joinder of necessary party.

Learned counsel for the Bank also submits that the petitioners have raised the claim of part of the plot being an owner of 1 katha appertaining khata no. 570, khesra no. 172, tauji no. 184, thana no. 12 which is also part of the plot mortgaged by one Satish Kumar. The dispute is with regard to right, title and interest over the said property for which a civil suit will lie as held in the case of **Nahar Industrial Enterprises Ltd. V. Hong Kong & Shanghai Banking Corporation, since reported in 2009(8) SCC 646**. He refers to paragraph-107, 108 and 109 stating therein that DRT has been created for cases which relates to Banks and Financial Institutions and the jurisdiction of the civil court is barred in relation to only to applications from Banks and Financial Institutions for recovery of debts due to such Banks and Financial Institutions. He submits that since the petitioners disputed the right, title and interest of the borrower one Satish Kumar, the proper remedy would be the civil court as the jurisdiction of a civil court is plenary in nature. It will have jurisdiction to determine all disputes of civil nature.

Heard the parties. The petitioners have challenged the mortgage created by one Satish Kumar which was declared NPA and the Bank took SARFAESI action. Eventually the said mortgaged land was auctioned and respondent no. 4 was the auction purchaser. The petitioners have claimed that a portion of the land auction sold was occupied by the petitioners by way of a registered sale deed dated 30.10.1985. The matter relates to right, title in interest over the said property for which the proper court will be the civil court of competent jurisdiction.

Writ application has no merit. It is dismissed.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2018
Transmission Date	NA