IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15313 of 2017

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Kavita Devi D/o Sheo Narain Sah Resident of Village - Samahauta, P.S. - Kargah, District - Rohtas, Presently living at Takia, Ward No. 3, Sasaram (Rohtas).

... ... Petitioner/s

Versus

1. Madhya Bihar, Gramin Bank, Regional Office, Sasaram, Infront of Sales Tax Office at G.T. Road, Sasaram, District - Rohtas, Pincode : 821115 (Bihar).
2. B.N. Tiwary, Regional Officer/Authorised Officer, Madhya Bihar Gramin Bank.
3. Rahul Kumar Gupta S/o Late Jag Narain Sah
4. Doma Sah S/o Late Neur Sah
5. Sheo Narain Sah S/o Late Neur Sah Respondent No. 3, 4 & 5 residents of Mohalla Takia, P.O. & P.S. - Sasaram, District - Rohtas.
6. Nandu Sah S/o Sheo Narain Sah
7. Shambhu Sah S/o Sheo Narain Sah Respondent No. 6 & 7 residents of Village - Samahut, P.S. - Karghar, District - Rohtas, Presently living at Takia, Ward No. 13, P.S. - Sasaram, District - Rohtas.
8. Reena Devi D/o Sheo Narain Sah, W/o Rakesh Kumar Resident of Village - Lalapur, P.S. - Kudra, District - Kaimur (Bhabua) at present Mohalla - Takia, Ward No.3, P.S. - Sasaram, District - Rohtas.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Prasad, Advocate
For the Respondent/s	:	Mr. Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
Date : 31-07-2018

Heard learned counsel for the petitioner and the learned counsel for the Madhya Bihar Gramin Bank.

On the last occasion, the counsel for the Respondent Bank had submitted that all dues have been satisfied with regard to the loan taken in connection with M/s Intel Enterprises, Annexure-3 for which he was directed to file a counter affidavit. Now, the petitioner has filed a supplementary affidavit wherein notice under Section 13(2) of the Securatisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as the SARFAESI Act), Annexure-5 has been issued in the case of another loanee i.e. M/s Shri Mahadeo Bhandar, proprietor Shiv Narayan Sah and the possession notice Annexure-4 under Section 13(4) of the SARFAESI Act has been issued in respect of the said loan. The said SARFAESI notice under Section 13(2) dated 08.02.2016 as contained in Annexure-5 is with regard to the said loan for which Annexure-4 has been issued. Hence, the counsel for the Bank could not file a counter affidavit.

Learned counsel for the petitioner in the present writ application has challenged the SARFAESI notice under Section 13(2) of the SARFAESI Act , Annexure-5 dated 08.02.2016 and the possession notice dated 02.06.2017 as contained in Annexure-4 stating therein that she was not a loanee and in Title Suit No. 606 of 2017 the ancestral properties have been partitioned on the basis of the compromise between the parties and the shares have been defined by order dated 07.07.2017. The petitioner got a share of 2 decimals of land in Khata No. 109, appertaining to Plot No. 403, which is part of the plot of 5 decimals on which SARFAESI notices under Section 13(2) and 13(4) have been issued. He submits that the property of the petitioner could not be a taken possession as against the loan of the borrower Shiv Narayan Sah and Shambhu Sah as she was neither a borrower nor the loanee.

In this connection, the petitioner relies on the decision passed by the Apex Court in the case of Mrs. Janki Vashdeo Bhojwani and Anr versus The Indusind Bank Limited and Others since reported in 2004(3) SCC-584 and in the case of Gopal Prasad Dokania Vs. the Punjab National Bank and Ors., since reported in 2010(2) PLJR 422 as well as an interim order of stay passed by this Court in CWJC No. 3812 of 2017 vide order dated 19.05.2017.

Learned counsel for the Bank, however, submits that the present writ application is not maintainable as there is provision of appeal under Section 17 of the SARFAESI Act as it is not only the borrower/loanee of the Bank, as any person (including borrower) who is aggrieved by any of the measures of the Bank under Section 13(4) could file an application against the measures for recovery of the said debt. He further submits that the loan was taken by the borrowers from the Bank and account having been declared NPA, SARFAESI notice under Section 13(2) has been issued on 08.02.2016 and possession notice under Section 13(4) was issued on 02.06.2017 and the partition on compromise has been effected on 07.07.2017 which was a subsequent development.

Considering the peculiar facts and circumstances, the decision as cited by the petitioner will have no application in the present case. The petitioner is well advised to move before the Debt Recovery Tribunal or the Court of competent Civil jurisdiction for redressal of his grievances.

Limitation, if any, may be condoned by the competent authority if an application is filed by the petitioner within a period of ten days from the date of receipt of a copy of this order.

The writ application is disposed off accordingly.

(Nilu Agrawal, J)

Arjun/Pragya

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2018
Transmission Date	NA