

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.494 of 2018

IN

Civil Writ Jurisdiction Case No. 15902 of 2017

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1. Md. Saleem Rizvi Son of Md. Nayeem Resident of Hotel Daisy, 6 Complex, DariyapurBaripath, Patna.

2. Safia Bano Wife of Saleem Rizwi Resident of Hotel Daisy, 6 Complex, DariyapurBaripath, Patna.

3. Shabistan Saleem @ Sabistan Saleem D/o Md. Saleem Rizvi Resident of Hotel Daisy, 6 Complex, Dariyapur, Baripath, Patna.

.... Appellant/s

Versus

1. State Bank of India Stressed Assets Resolution Centre Branch, situated in Patna , Main Branch, Patna through the Asst. General Manager.

2. HDFC Bank Ltd. Rani Plaza, 2nd Floor, Exhibition Road, Patna through the Branch Manager.

3. Punjab and Sindh Bank, Haziganj, Patna City, Patna, through the Branch Manager.

4. Committee of All Lenders, represented through its Presiding Member, being State Bank of India (Assignee ARCIL), Punjab and Sind Bank and HDFC Bank Ltd. at 3rd Floor, Rajendra Ram Plaza, Exhibition Road, Patna - 800001, its registered Office at the Ruby , 10th Floor, 29, Senapati Bapat Marg Dadar (West) Mumbai and address at Room no. A/11, 8th Floor, Chatterji In International centre 33A, J.L. Nehru, Road Kolkata.

5. Rasid Akhtar, Darzi Tola, Sabji Bagh, Patna-800004.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sahvind Kumar Sharma

For the Respondent/s : Mr. Kaushlendra Kumar Sinha

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 23-07-2018

Challenge in the present Letters Patent Appeal is to the



judgment dated 19.03.2018 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.15902 of 2017 by which the learned Writ Court has refused to quash the public notice issued by the respondent Bank and its authorities through the Committee of All Lenders represented by Presiding Member being State Bank of India (Assignee ARCIL) (respondent no.4) regarding auction-cum-sale of the properties and published in Times of India, Patna Edition, dated 10.10.2017, as contained in Annexure-2 to the writ application. From the prayers made in the writ application it further appears that the petitioners had also prayed for restraining the respondents from holding any auction-cum-sale of the property detailed therein pursuant to the aforesaid public notice.

The brief facts which are culled out from perusal of the records placed before this Court are not in dispute. The petitioners who are the joint owners of a multi-storied building named Dazy Commercial Complex obtained financial assistance from the State Bank of India (SBI), HDFC Bank Limited (HDFC) and Punjab & Sindh Bank by creating equitable mortgage of the properties. Pursuant to some litigations the recoverable amounts were fixed and certain directions as have been taken note of by the learned Writ Court in the impugned judgment, were passed in the earlier round of the writ



proceedings. While the contention of the writ petitioners before the learned Writ Court was that the valuation report submitted by the engineer appointed by lenders is not a correct valuation of the property, the Committee of lenders found that the petitioners valuation were unrealistic and took a unanimous decision to proceed with the auction sale. They were of the view that the petitioner no. 1 has been obstructing the sale of the secured assets through all possible means and was delaying the process of recovery. The petitioner no.1 was even invited to bring buyers any time prior to the public auction and to liquidate the dues before the date of auction, but despite a lapse of over nine months petitioner no.1 had not come forward to deposit the outstanding dues of the Bank in order to save his property rather, according to lenders the petitioner no.1 was not cooperative.

Learned Writ Court has taken note of the developments wherein pursuant to the sale notice property was finally sold to the prospective buyer. Since the learned Writ Court was of the view that the petitioners were trying to rake up the issue almost a year later when the auction-cum-sale notice has been published on 10.10.2017 and as the issue raised with regard to valuation of the property was subject matter of consideration also in the earlier writ and contempt petition being MJC No.662 of 2015 which was ultimately dismissed,



the prayer of the petitioners in the writ petition having been founded on the same issue is devoid of merit. The writ application was dismissed taking a view that at this belated stage the petitioners are resorting to litigation only with a view to further delay the matter and obstruct recovery of the outstanding dues admittedly owned by the petitioners.

In course of hearing we have been informed by the respondent Bank that pursuant to the auction sale, the property in question has already been sold out to the prospective buyer, possession has already been handed over to him and the sale deed has also been executed in his favour.

In the aforesaid facts and circumstances of the case, we are of the considered opinion that when the petitioners are admittedly owing the loan amount as determined and have failed to repay the bank, no fault may be found with the action of the bank in resorting to the provisions contained under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

On record we find that the copy of the judgment dated 07.05.2014 passed in Civil Writ Jurisdiction Case No.15791 of 2012 in which this Court had occasion to consider each and every aspect of



the matter and thereupon upheld the action of the Bank in proceeding with the recoveries. This order of the learned Writ Court, has attained finality, thus on the petitioners failing to repay the amount as determined therein the auction-cum-sale notice was issued and consequently sale and handing over of the secured assets has already taken place.

We do not find any merit in this Letters Patent Appeal, hence the same is hereby dismissed.

(Rajendra Menon, CJ)

Arvind/-

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	30.07.2018
Transmission Date	

