IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2289 of 2016

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1. M/s Mahendra Beverages & Foods Pvt. through its Director Rajesh Kumar Sinha, Son of Late Mahendra Prasad Singh, Resident of Dalluchak Khagaul, P.O. - Khagaul, P.S. - Khagaul, District - Patna - 801105.
2. Ambrish Chandra Singh, Son of Sri Kumar Ambrish Chandra Singh,
3. Nilotpala Singh, Wife of Ambrish Chanadra Singh, Both 3 and 4 residents of Lalkothi, Near Munger Railway Station, P.O. Head Post Office, P.S. - Kotwali, District - Munger.
4. Sunaina Devi, Wife of Sri Krishna Singh, Resident of Village - Chamrichak, P.O. - Jasmaout, P.S. - Shalpur, District - Patna.

.... Petitioner/s

Versus

1. Bank of India, Zonal Office, Patna Zone, 1st Floor, Chanakya Palace, R- Block, Patna - 800 001.
2. The Chief Manager, Bank of India, Zonal office, Patna Zone, 1st Floor, Chanakya Palace, R- Block, patna - 800 001.
3. The Authorised Officer, Bank of India, Zonal Office, Patna Zone, 1st Floor, Chanakya Palace, R- Block, Patna - 800 001. null null
4. The Manager, Bank of India, Kankarbagh Branch, Patna.
5. Pawan Kumar S/o Sri Raja Babu R/o H.N. 80, Chandpur, Bela, Mithapur , PO - GPO, PS Jakkanpur, Dist Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Jai Vardhan Narayan

For the Respondent/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
Date: 19-07-2018

Heard learned counsel for the petitioners, learned counsel for the respondent Bank and learned counsel for the respondent no. 5 who is auction purchaser.

Two interlocutory applications have been filed by the petitioners being I.A. No. 7295 of 2016 and I.A. No. 7296 of 2016. I.A. No. 7296 of 2016 has been filed by the Managing Director Rajesh Kumar Sinha for impleadment in his individual capacity as petitioner no. 5. I.A. No. 7295 of 2016 has been filed by one Shikha Sinha who is one of the guarantors seeks impleadment as petitioner no. 6.

Both interlocutory applications (I.A. No. 7295 of 2016 and I.A. No. 7296 of 2016) are allowed.

The facts of the case is that on 20.02.2008 vide Annexure-1 loan was sanctioned to the petitioners by the Bank being cash credit of 15 lacs and term loan of one crore, 10 lacs. The respondent Bank of India issued E-auction notice dated 29.04.2015 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') dated 15.12.2015 for auction of the property and realization of the loan amount when account turned NPA.

Petitioners have challenged the E-Auction Notice by which the auction of the property mortgaged with the respondent Bank of India had been fixed on 21.01.2016. The petitioners have also prayed for returning of all their pledged documents on the ground that all the payments have been made in lieu of loan taken which the petitioners have annexed by way of supplementary affidavit. Details of the chart is as per the second supplementary affidavit in paragraph-5. The total outstanding dues as per the SARFAESI notice dated 29.01.2015 has been satisfied and out of the outstanding dues of Rs. 92,63,841.48/-, petitioners have deposited Rs. 93,00,000/-. Hence, prayer is that 3rd party right created by the Bank by issuing a sale notice to the respondent no. 5 should be quashed and the petitioners be given possession of the pledged documents. Learned counsel for the petitioners relies on a judgment passed in C.W.J.C. No. 17717 of 2010, decided on 21.01.2016 stating therein that this Court had allowed the petitioner to avail settlement and consideration under ‘OTS Scheme, 2009’ as deposit by the auction purchaser does not take away the right of the petitioner nor completes the sale transaction. The petitioners thus contend that having satisfied the entire loan amount, the sale of the property of the petitioners to 3rd party no longer survives and the petitioners are entitled to return of their documents and the physical possession of the said property. He also submits that a memorandum of outstanding was executed between the petitioners on the one hand and one Ambrish Chandra Singh of taking over the company along with the share capital which is Annexure-5 and a notice in this regard was given to the Bank but the respondent Bank has not taken any notice to it

Learned counsel appearing on behalf of the Bank, however, submits that the petitioners had defaulted in payment of loan amount and the account became N.P.A. as such, SARFAESI Notice under Section 13 (4) was issued to the petitioners on 29.01.2015 showing outstanding dues of Rs. 92,63,841.48/- upto the date of notice and now the sale to private respondent no. 5 has been confirmed and sale certificate issued in his favour.

Learned counsel for the private respondent no. 5-auction purchaser, however, submits that the auction purchaser was the highest bidder and now the sale certificate has already been drawn in his favour which is Annexure E to his counter affidavit dated 04.02.2016. He submits that even otherwise, this writ application is not maintainable as per Section 17 of the SARFAESI Act, 2002, the petitioners could have vented their grievance before the Debt Recovery Tribunal but instead the petitioners have straightaway moved this Court in writ jurisdiction and has obtained an order of status quo which according to him should not have been granted in view of the law laid down by the Apex Court in the case of **Optiemus Infracom Ltd. Vs. Ishan Systems (p) Ltd.** as reported in **(2012) 8 SCC 572** relevant is paragraph-6, 7 and 10. He submits that now since the certificate of possession has already been granted and the respondent-auction purchaser has deposited the entire consideration, this writ ought to be dismissed.

Heard the parties.

The petitioners had availed loan facilities from the respondent Bank and when the account became over due and NPA, the Bank proceeded under the SARFAESI Act and the notice under Section 13 (4) was issued on 29.01.2015 showing the outstanding dues of Rs. 92,63,841.48/- as on date of notice. Petitioners had failed to make payment. The respondent Bank sold the said mortgaged property through E-Auction and date of sale was fixed on 21.01.2016 wherein the auction purchaser was the highest bidder and a possession notice was issued on 05.11.2015 which was circulated in the newspaper which is Annexure-B of the counter affidavit of the respondent no. 5. Thereafter, a possession notice was given to the respondent no. 5 which is dated 04.02.2016.

From perusal of the second supplementary affidavit the petitioners have given a chart of payment which is as under:

Date	**Amount**
26.03.2015	Rs. 3,00,000.00/-
26.03.2015	Rs. 2,00,000.00/-
11.05.2015	Rs. 3,50,000.00/-
15.05.2015	Rs. 1,50,000.00/-
04.06.2015	Rs. 2,00,000.00/-
26.05.2015	Rs. 3,00,000.00/-
03.08.2015	Rs. 1,00,000.00/-
04.09.2015	Rs. 50,000.00/-
19.10.2015	Rs. 50,000.00/-
01.03.2016	Rs. 10,00,000.00/-
21.04.2016	Rs. 66,00,000.00/-

Petitioners have deposited Rs. 10,00,000/- on 01.03.2016 and Rs. 66,00,000/- on 21.04.2016. The outstanding amount was Rs. 92,63,841.48. The sale certificate is dated 04.02.2016. The petitioners have deposited 76,00,000/- after issuance of sale certificate to the respondent no. 5 after the sale being complete and possession being handed over to the respondent no. 5.

Under the facts and circumstances, since the 3rd party right has been created, the petitioners deposited the said amount after sale certificate accruing on behalf of respondent no. 5, I find no merit in this writ application.

Writ application is, accordingly, dismissed.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.07.2018
Transmission Date	NA