

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1405 of 2018

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Lal Babu Prasad @ Lal Babu Jaiswal Son of Achhelal Prasad resident of
Chandan Nagar, P.S. - Gulabbagh, Purnea.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, District - Purnea.
2. The Bank of Baroda, through the Zonal Manager, Bank of Baroda, 5th Floor, Anand Vihar, West Boring Canal Road, Boring Road, Patna - 800001.
3. The Zonal Manager, Bank of Baroda, 5th Floor, Anand Bihar, West Boring Canal, Boring Road, Patna - 800001.
4. The Branch Manager, Bank of Baroda, Branch - Gulabbagh, P.S. - Sadar, District - Purnea.
5. Binod Kumar Sah, Son of Paras Sah, resident of Village - Chandan Nagar, Gulab Bag, P.S. - Sadar, District - Purnea.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 661 of 2018

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Lal Babu Prasad @ Lal Babu Jaiswal, Son of Achhelal Prasad, resident of
Chandan Nagar, P.S.- Gulabbagh, Purnea.

.... Petitioner

Versus

1. The State of Bihar through its District Magistrate, District- Purnea.
2. The Bank of Baroda, through the Zonal Manager, Bank of Baroda, 5th Floor, Anand Vihar, West Boring Canal Road, Boring Road, Patna- 800001.
3. The Zonal Manager, Bank of Baroda, 5th Floor, Anand Vihar, West Boring Canal Road, Boring Road, Patna- 800001.
4. The Branch Manager, Bank of Baroda, Branch- Gulab Bagh, P.S.- Sadar, District- Purnea.
5. Gayatri Devi, Wife of Lal Babu Prasad @ Lal Babu Jaiswal, resident of Mohalla- Chandan Nagar, Gulab Bag, P.S.- Sadar, District- Purnea.

.... Respondents

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Appearance :

(In CWJC No.1405 of 2018)

For the Petitioner : Mr. Sumeet Kumar Singh,
Mr. Satyendra Prasad Singh,
Mr. Abhiprav Singh, Advocates

For the State : Mr. Anujit Sinha, Pr. AAG2

For Respondent-Bank : Mr. Sanjeev Shankar, Advocate

(In CWJC No.661 of 2018)

For the Petitioner : Mr. Sumeet Kumar Singh,
Mr. Satyendra Prasad Singh,
Mr. Abhiprav Singh, Advocates

For the State : Mr. Raghwendra Kumar -SC22

For Respondent-Bank : Mr. Sanjeev Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 19-03-2018

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

2. The present writ petitions are being taken up with the consent of parties for disposal together as they relate to the same petitioner in respect of separate loans taken from the respondent-Bank of Baroda. The prayer in CWJC No. 1405 of 2018 is for quashing the two notices issued under Section 13(2) of Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") both dated 09.10.2017 (Annexures - 1 & 2), and for setting aside the notices under Sections 13(4) and 13(2) of SARFAESI Act dated 20.12.2017 (in CWJC No. 661 of 2018). A common prayer has also been made in both the writ petitions for directing the respondent Bank to recalculate the amounts after giving due opportunity to the guarantor for making payment of the dues.

3. Learned counsel for the petitioner states that the petitioner is a guarantor in respect of the subject loans which have been advanced to Smt. Gayatri Devi, the petitioner's wife, and M/s Hari Om Raw Rice Industries, which belongs to a next door neighbour of the petitioner, respectively. It is submitted that the petitioner is ready and willing to make payment of the entire outstanding dues of the bank for which he has already filed representation before the respondent-Bank.



It is submitted that the proceedings under the SARFAESI Act for the recovery of the dues in question are wholly illegal and unsustainable in law inasmuch as the notices in question have not duly been served upon the petitioner.

4. A counter affidavit has been filed on behalf of the respondent-Bank in CWJC No. 661 of 2018, enclosing a copy of the possession notice dated 20.12.2017 on the face of which itself the acknowledgement of the petitioner appears. It is therefore submitted that the stand of the petitioner that the notice was not properly served is ex-facie false. It is further submitted that the petitioner's conduct disentitles him from obtaining relief from this Court inasmuch he has leased out the mortgaged property on monthly rent of Rs. 5,31,352/- in favour of Sohan Lal Commodity Management Private Limited after issuance of notice u/s 13(2) of SARFAESI Act, with a view to defraud the respondent-bank as well as the lessee.

5. 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. To begin with, the claim of the petitioner in CWJC No. 1405 of 2018 that the impugned notices under Section 13(2) of the SARFAESI Act have not been properly served, cannot be accepted as the petitioner has himself enclosed copies of the said notices impugned herein which itself show that the subject notices have been received by him. Instead of filing his objections in accordance with the statutory provisions, he has preferred the present



writ petition. Secondly, the stand of the respondents in CWJC No. 661 of 2018 that the notice under Section 13(4) of the SARFAESI Act bears the endorsement of the petitioner and hence due service of notice upon him cannot be disputed, has not been controverted. The petitioner has also not denied that after issuance of notice under Section 13(2), the petitioner has leased out the mortgaged properties to Sohan Lal Commodity Management Private Limited on a monthly rent of Rs. 5,31,352/- which shows the ill-intentioned conduct of the petitioner. Such lease is in direct violation of the provisions of Section 13(13) of the SARFAESI Act and required the prior written consent of the secured creditor.

6. These writ petitions stand dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.03.2018
Transmission Date	N.A.

