IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11746 of 2018

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1. M/s Surya Automobiles, at Resident of Suraj Nagar, Post Akauna Bazar, P.S.- Mufassil, District- Nawada, through its Partner Binay Kumar @ Binay Kumar Singh.
2. Anirudh Prasad Singh, Son of Late Suraj Dev Prasad Singh, Resident of Suraj Nagar, Post Akauna Bazar, P.S.- Mufassil, District- Nawada.
3. Binay Kumar Singh @ Binay Kumar, Son of Late Ram Nandan Prasad Singh, Resident of Suraj Nagar, Post Akauna Bazar, P.S.- Mufassil, District- Nawada.
4. Smt. Radha Devi, Wife of Late Bhushan Prasad Singh, Resident of Suraj Nagar, Post Akauna Bazar, P.S.- Mufassil, District- Nawada.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary through Finance Department, Govt. of Bihar, Patna.
2. The Zonal Manager, Central Bank of India, 2nd Floor, Maurya Lok Complex, Patna, Bihar.
3. The Zonal Manager Regional Manager Central Bank of India, Zonal Office, 2nd Floor, Maurya Lok Complex, Patna, Bihar.
4. The Authorized Officer, Central Bank of India, Zonal Officer 2nd Floor, Maurya Lok Complex, Patna, Bihar.
5. The Branch Manager, Central Bank of India, Branch Nawada, Kadam Kuan Chauk, Station Road, Nawada.

.... Respondents

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Appearance :

For the Petitioners : Mr. Mahesh Narayen Parbat, Sr. Adv.
Mr. Bipin Kumar, Advocate.
For the State : Mr. Satya Prakash, AC to SC-22
For the Resp. Bank : Mr. Ajay Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-07-2018

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs -

"(a) To issue a writ of certiorari for quashing the auction sale notice as published in daily news paper Hindustan daily dated 10.06.2018 (Annexure-4) issued by the Authorized Officer of Central Bank of India, through which he has been pleased to invite tenders for e-auction sale of dwelling house of petitioners no. 2 to 4 in illegal and arbitrary manner fixing date of auction sale as 05.07.2018 contrary to provisions of S.A.R.F.A.E.S.I. Act 2002 and rules framed thereunder and without proper valuation of the land in question and building standing over the same.

(b) To issue a writ of mandamus commanding the respondents to discharge their legal obligation to follow the provisions of S.A.R.F.A.E.S.I. Act 2002 and rules applicable therein in its words and spirit and after allowing reasonable time to the petitioner to deposit the dues NPA amount in instalments and after proper accounting of dues amount and valuation of land and building in question only to proceed further for realization of dues amount.

(c) For a direction to the respondent authorities to grant further 3 month time in continuation to agreement with the bank dated 19.09.2017 because due to illness and demonetization petitioners are not been able to sell their properties and petitioners further undertake that he will pay the entire amount of the agreement dated 19.09.2017 with the interest as stated in the agreement within 3 months.

(d) For a direction to the respondent authority to stay the auction dated 05.07.2018 published on 10.06.2018 in the news paper (Annexure-4) for only 3 months so the petitioners to repay the loan amount.

(e) For any other relief/reliefs if petitioners found entitled in the facts and circumstances of the case."

3. Learned Senior counsel Mr. M.N. Parbat appearing on behalf of the petitioners submits that pursuant to the compromise arrived at between the parties on 19.09.2017 (page-26) of the brief, an amount of Rs. 49.31 lacs has since been paid and the petitioners seek further three month's time to make payment of the remaining dues. It is stated that the respondent-Bank has issued Auction-cum-Sale Notice fixing 05.07.2018 for sale of the residential house of the petitioners.

4. Learned counsel for the respondent-Bank appears and opposes the writ petition, submitting that the petitioners have defaulted the terms of the compromise and have failed to make due payment.

5. Having heard learned counsel for the parties and on consideration of the materials on record, this Court is not inclined to interfere in the matter. It transpires that the petitioners had earlier approached this Court in C.W.J.C. No. 4487 of 2017 (page-22) which was disposed of on 25.01.2018, noticing that the parties had arrived at a compromise. The terms of the said compromise dated 19.09.2017 (page-26) discloses that the petitioner was required to make payment of Rs. 241.80 lacs within 30 days free of interest, and in the alternative, within a period of six months with interest @ 10% simple. It was

specifically stated that in case the petitioners failed to repay the compromise amount within the stipulated period, the entire concession would stand withdrawn to be treated as if there was no compromise settlement in the account and recovery measures would accordingly be pursued without concession. It is not in dispute that the terms of the compromise have duly been accepted by the petitioners. It is also not in dispute that the entire payment has not been paid even within the extended period of six months with interest. The petitioners are therefore clearly in default of the compromise reached between the parties which clearly stipulated that failure to make repayment would negate the compromise itself and recovery would be resorted to for the due amount.

6. The writ petition is therefore devoid of merit and is dismissed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09.07.2018
Transmission Date	N.A.