

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10888 of 2018

=====

M/s Mangalam Automobiles, N.H. 19 Bypass road, Near Pani Tanki, Shakti nagar, Chapra, Saran through its Proprietor Rajendra Prasad Singh, son of Late Shivpujan Singh, resident of Chandmari Road, Chapra, P.S. Chapra, P.S. Chapra Mufassil, District- Saran.

.... Petitioner

Versus

1. U C O Bank through its Zonal Manager, Zonal Office, Mauryalok Complex, Dakbunglow Road, Patna-800001.
2. Shri S.A. Hoda, Chief Manager, UCO Bank, Zonal Office, Mauryalok Complex, Dakbunglow Road, Patna-800001.
3. The Senior Manager, UCO Bank, Chhapra Branch, Town-Chhapra, District-Saran.
4. The Debts Recovery Tribunal through its Registrar, Karpuri Sadan, 2nd Floor, 'A' 'B' and 'F' Wings, Near Rajeev Nagar Than, Ashiana Digha Road, Patna-800025.
5. The Recovery Officer-II, Debts Recovery Tribunal, Karpuri Sadan, 2nd Floor, 'A' 'B' and 'F' Wings, Near Rajeev Nagar Than, Ashiana Digha Road, Patna-800025.
6. Shri Kameshwar Prasad Singh, s/o late Suraj Singh, R/o Mohalla- Masumganj, P.S. Bhagwanbazar, District- Saran.
7. Smt. Shashi Kumari w/o Ramnandan Singh, R/o Mohalla- Masumganj, P.S. Bhagwanbazar, District- Saran.
8. The District Magistrate, Saran
9. The Superintendent of Police, Saran.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Rajesh Mohan, Advocate.

For the Respondents : Mr. Ranjeet Kumar Pandey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-07-2018

I.A. No. 4890 of 2018

This interlocutory application has been filed for ad interim stay of memo dated 27.06.2018 issued for the physical



possession of the mortgaged property of the petitioner i.e. residential house as well as the shops has been notified to be taken on 06.07.2018 by the respondents.

2. Having regard to the nature of the prayer, the I.A. No. 4890 of 2018 is allowed and the same shall be treated as forming part of the writ petition.

C.W.J.C. No. 10888 of 2018

3. The main writ petition has been filed for the following reliefs -

"For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing of Memo No. 966 dated 25.05.2018 issued by the respondent- District Magistrate, Saran, Chapra by which and whereunder 12.06.2018 fixed for hand over the physical possession to the auction purchaser of the mortgaged property of the petitioner pursuant and auction sale of the mortgaged property of the petitioner held on 11.10.2017 by the respondent-Bank under the aegis of respondent no. 5 for a sum of Rs. 56,75,000/- (Rupees Fifty Six Lakhs Seventy Five Thousand only) and for quashing of auction sale as well as the sale certificate issued in favour of respondent no. 6, an ex employee of the respondent Bank, who had himself processed the loan of the petitioner in the year 2014 and for setting aside order dated 07.10.2017 passed in R.P. Case No. 553/2016 by the Recovery Officer (respondent no. 5) whereby and whereunder the petitioner's objection with regard to the undervaluation of the mortgaged property



has been rejected and for an appropriate writ, order or direction in the nature of writ of mandamus commanding the respondent authorities to conduct a fresh auction of the mortgaged property in a fair and transparent manner after revising the reserve price of the mortgaged property in terms of its current valuation and for any other relief/reliefs that the petitioner may be found entitled to in the facts and circumstances of the instant case.”

4. At the very outset, it may be stated that this matter had been taken up out of turn on 06.07.2018 on the request of learned counsel for the petitioner stating that the police force was standing at the doorstep to take over forcible possession of the residential house of the petitioner. Interim orders were sought on the ground that owing to financial stringency, the petitioner was unable to raise the amount of 50% of pre-deposit required to be made in terms of Section 30-A of the Recovery of Debts and Bankruptcy Act, 1993 before the appeal could be entertained. The petitioner had already prepared a term deposit dated 04.07.2018 of Rs. 15,00,000/- with Oriental Bank of Commerce and sought 10 days' time to come up with the remaining amount of Rs. 10,00,000/- for the purpose.

5. Since a copy of the aforesaid I.A. had not been served on learned counsel for the respondent-Bank, the matter was passed over and has come up once again today.

6. Learned counsel for the petitioner has produced



another term deposit dated 07.07.2018 for Rs. 10,00,000/- with the Oriental Bank of Commerce and submits that the two term deposits together sufficiently cover the amount of 50% required as pre-deposit. It is stated that stay petition has already been filed in the appeal pending before the Debts Recovery Tribunal, Patna.

7. Learned counsel for the respondent-Bank submits that the prayers and averments in the writ petition are substantially similar to those made by the petitioner in its earlier attempt before this Court in C.W.J.C. No. 4172 of 2018 (Annexure-13) which was however dismissed. It is therefore submitted that the writ petition itself is not maintainable.

8. Having regard to the stand of the parties and the nature of the grievance of the petitioner, this Court is of the view that no positive order need be passed in the writ petition. Considering that the petitioner has now raised sufficient funds and prepared the two term deposits covering the amount of the requisite pre-deposit, the petitioner shall be at liberty to approach the Debts Recovery Tribunal, Patna with the two term deposits. In such event the Debts Recovery Tribunal shall proceed in the matter in accordance with law. The petitioner shall be entitled to press any stay application as may have been filed by him before the Debts Recovery Tribunal which should be disposed of expeditiously after grant of opportunity of



hearing to the parties.

9. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.07.2018
Transmission Date	N.A.

