

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2135 of 2018

Sanjay Kumar, son of Late Satya Narayan Singh, resident of Ward No. 3, Takiya, P.O.- Takiya Bazar, Police Station- Sasaram Model Thana, District- Rohtas, Proprietor of Sarswati Enterprises.

.... Petitioner

Versus

1. Authorised Officer, Bank of Baroda, P.O. & P.S. Sasaram.
2. Bank of Baroda, Main Branch, Himanshu Market, Old G.T. Road, Sasaram, District- Rohtas, Bihar.
3. The Regional Manager, Regional Office, Bank of Baroda, Anand Bihar, 4th Floor, West Boring Canal Road, Patna.

.... Respondents

With

Civil Writ Jurisdiction Case No. 2159 of 2018

1. Sribhagwan Singh, Son of Late Ramdeni Singh,
2. Ajay Kumar, son of Late Satyanarayan Singh, Both resident of Mohalla Takiya Sasaram, Ward No. 3, Police Station- Model Thana Sasaram, District- Rohtas.

.... Petitioners

Versus

1. The Bank of Baroda, through its Chairman cum Managing Director, Suraj Plaza-1, Sayaji Ganj, Baroda- 390005.
2. The Regional Manager, Regional Office, Bank of Baroda, Patna.
3. The Branch Manager, Bank of Baroda, Sasaram Branch, Fasnu Market, Old G.T. Road, Sasaram, District- Rohtas, Bihar.
4. Sanjay Kumar, Son of Late Satyanarain Singh, Residing at Bazar Samiti, Sasaram, District- Rohtas.

.... Respondents

Appearance :

(In CWJC No.2135 of 2018)

For the Petitioner : Mr. Ajay Prasad, Advocate

For the Respondents : Mr. Ratnesh Nandan Sinha, Advocate

(In CWJC No.2159 of 2018)

For the Petitioners : Mr. Ajit Kumar Sinha, Advocate

For the Respondents : Mr. Ratnesh Nandan Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-03-2018



CWJC No. 2135 of 2018

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. The present writ petition has been filed for quashing of auction sale notice published in the Hindi daily newspaper "*Dainik Bhaskar*" dated 24.01.2018 (Annexure-1) as well as the judgment dated 17.10.2017 passed by the Presiding Officer, Debts Recovery Tribunal, Patna in S.A. No. 140 of 2017 (Annexure-2).

3. Learned counsel for the petitioner has sought to challenge the validity of the impugned judgment of the Debts Recovery Tribunal, *inter alia*, on the ground that the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") as well as Section 13(4) of the SARFAESI Act had not been validly served and hence, the impugned action in respect of auction which is said to be fixed today is wholly arbitrary. It is stated that the notice under Section 13(2) dated 04.04.2017 had not been validly served having been received by one Paras Nath Singh, as will be evident from the certificate dated 25.09.2017 issued by the Postal Department (Annexure-5). It is stated that the said Paras Nath Singh is neither a borrower nor a guarantor in respect of the loan in question. It has further been submitted that the Bank has illegally proceeded with substituted service of notice without following the procedure with



regard to the alleged refusal of service of notice under 13(4) of the SARFAESI Act.

4. Learned counsel for the respondent-Bank, on the other hand, submits that the notice under Section 13(2) of the SARFAESI Act was admittedly served on the addressee as evident from two other certificates, both dated 05.09.2017, issued by the Superintendent of Post Offices, Sasaram to the effect that the registered letters had been delivered to the addressee on 07.04.2017. Similarly, the issue relating to the procedure required to be adopted upon refusal of the notice u/s 13(4) has also been disputed by the respondent-Bank.

5. Learned counsel for the respondent-Bank has also drawn the attention of this Court to the written report filed before the Officer Incharge Nagar Thana, Sasaram, Rohtas by the respondent Bank of Baroda as well as by Punjab National Bank, Sasaram Branch alleging various acts of fraud and diversion of funds by the petitioner and his family members. It is pointed out that the petitioner and his family members have indulged in serious acts of conspiracy and fraud in having offered security by way of three immovable properties, out of which two immovable properties had already been sold prior to being so offered by way of security.

6. 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.



7. As far as issue of validity of service of notice under Section 13(2) of the SARFAESI Act is concerned, the different certificates issued by the postal department will require further investigation into disputed facts, which this Court is not inclined to enter into in its writ jurisdiction. There are serious accusations of fraud having been committed by the petitioner in conspiracy with his close family members. Moreover, the impugned judgment dated 17.10.2017 of the Debts Recovery Tribunal, Patna (Annexure-2) is admittedly amenable to statutory appeal before the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act which has not been availed of by the petitioner even after lapse of about four and half months since the judgment was passed in the presence of the petitioner. The issue relating to the procedure for service of the notice u/s 13(4) in case of its refusal can well be agitated in appeal.

8. In the above circumstances, the writ petition stands dismissed.

CWJC No. 2159 of 2018

9. The facts in the present case are almost identical to the facts of CWJC No. 2135 of 2018, with the difference that the petitioner herein is a guarantor and mortgager of the loan in which Sri Sanjay Kumar (petitioner of CWJC No.2135 of 2018) is the main borrower. It is submitted that the present petitioner has also conspired in diversion of funds along with the said Sri Sanjay Kumar and his family members as



his name specifically appears in the written report by Punjab National Bank filed before the Officer Incharge Nagar Thana, Sasaram, Rohtas on 06.07.2017.

10. In the above view of the matter, no case for interference by this Court is made out. This writ petition also stands dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
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