IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1844 of 2019

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Dharmendra Kumar Ambastha @ Dharmendra Kumar S/o Lae Nawal Kishore Pd. Resident of Village-Sona Gopalpur Dih,P.S. Gopalpur,Dist.-Patna,Age-63 years, Male.

... ... Petitioner/s

Versus

1. Allahabad Bank (A Government of India undertaking) through the Managing Director,H.O.2,N.S. Road,Kolkata.
2. Chief Manager, Allahabad Bank,Main Branch,Opposite Kotwali Thana,Budh Marg,Patna.
3. The Deputy General Manager, Zonal Office (Main Branch Premises),Budh Marg, Patna,Allahabad Bank,Budh Marg,Patna.
4. The Senior Manager, Allahabad Bank,Arunanchal Bhawan,Exhibition Road,Patna
5. Chief Manager, Allahabad Bank,Recovery Branch,Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shanti Pratap.

For the Respondent/s : Mr.Shiv Mohan Saha, AOR 03297

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 19-02-2019 Heard learned counsel for the petitioner and learned counsel for the Bank.

The petitioner is aggrieved by notice vide Letter No.223 dated 04.08.2018 issued under the signature of Chief Manager (Authorised Officer), Allahabad Bank, Recovery Branch, Patna by which the petitioner has been directed to discharge the entire liability as on date and to pay future interest thereon failing which the Bank shall be constraint to exercise all or any of Bank's right conferred under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). It is admitted by learned counsel for the petitioner that till date action under Section 13 (4) of the SARFAESI Act has not been taken by the Bank.

In the aforesaid view of the matter, this Court is of the considered opinion that this writ application is not fit to be entertained as the petitioner would have a statutory remedy available to him, if action under Section 13 (4) of the SARFAESI Act, 2002 is taken by the Bank. The writ application is also not fit to be entertained in view of the Judgment of the Hon'ble Supreme Court in the case of **United Bank of India vs. Satyawati Tondon reported** in **(2010) 8 SCC 110**. Even otherwise, it has been held in the case of **Mardia Chemicals Ltd v. Union of India** reported in **AIR 2004 SC 2371** that a mere notice under Section 13 (2) of the SARFAESI Act would not give rise to a cause of action to a borrower. Such cause of action, according to the Judgment of the Hon'ble Supreme Court in the case of **M/s Hindon Forge Pvt. Ltd. v. State of Uttar Pradesh** reported in **AIR 2018 SC 5383** would rise and shall give a cause of action only when action under Section 13 (4) of the SARFAESI Act, 2002 is taken by the Bank.

The writ application is thus dismissed.

So long a action has not been taken under Section 13

(4) of the SARFAESI Act, 2002 it is open to the petitioner to request the Bank to accept a settlement if it is permissible in terms of their recovery policy and guidelines of the Reserve Bank of India.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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