

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.636 of 2019

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Pramod Kumar aged about 49 years (Male), Managing Partner, M/s Prabha Cold Storage (Mohalla – Brahmpura, Laxmi Chowk, Muzaffarpur), S/o- Nagendra Sah, Resident of Ward No. 2, Krishna Toli, Laxmi Chowk, Brahmpura, Near Brij Bihari Prasad House, MIT, P.S.- Brahmpura, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The District Magistrate, Muzaffarpur, Bihar.
3. The Central Bank of India through the Chairman and Managing Director, Central Bank of India, Chandramukhi, Nariman Point, Mumbai, Maharashtra.
4. The Chairman and Managing Director, Central Bank of India, Chandramukhi, Nariman Point, Mumbai, Maharashtra.
5. The General Manager, Central Bank of India, Muzaffarpur, Patna.
6. The Zonal Manager, Central Bank of India, Maurya Lok, Patna, Bihar.
7. The Regional Manager, Central Bank of India, Maurya Lok, Patna, Bihar.
8. The Senior Branch-cum- Branch Manager, Central Bank of India, Sahupokhar Branch, Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Nikhil Kumar Agarwal, Advocate
For the State	:	Mr. Ravi Verma, AC to GP.4
For Central Bank of India:	:	Mr. Ajay Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3. 17-01-2019

This writ application has been preferred seeking a writ of *certiorari* for quashing the Notice issued under Section 13(4) of Securitisation And Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act, 2002”) issued on 28.12.2018 by which symbolic possession of the residential house and two other properties have been taken over by the Bank.

On the last date even though the court was conscious of legal position that the petitioner has a remedy in terms of



Section 17 of the SARFAESI Act, 2002 against the measures taken under Section 13(4) of the SARFAESI Act, 2002, this court had shown inclination to call upon the Bank to file a counter affidavit because a specific statement was made in the writ application that no notice under Section 13(2) i.e. the demand notice under the SARFAESI Act, 2002 has been served upon the petitioner.

Today when a counter affidavit has been filed on behalf of the Bank, it is found that the statement made in the writ application is not correct. The respondent Bank has brought on record copy of the notice under Section 13(2) along with the proof of its dispatch on the address of the petitioner.

At this stage, learned counsel for the petitioner seeks permission to withdraw this writ application with a liberty to move the Debts Recovery Tribunal in an appropriate application challenging the action taken by the respondent Bank under Section 13(4) of the SARFAESI Act, 2002.

Permission is granted.

This application is permitted to be withdrawn. The petitioner may, if so advised, move the appropriate forum in an appropriate jurisdiction for redressal of his grievance. In case such an application is filed within a period of 30 days from



today, the same shall be considered by the appropriate forum in accordance with law and in case a question of limitation arises for consideration, the petitioner may seek benefit of Section 14 of the Limitation Act.

The notice under Section 13(4) mentions three properties out of which the property at serial no. 2(*ga*) is said to be a residential property in which the petitioner and his family are presently residing. Taking note of this, the court is willing to grant interim protection with regard to the property at serial no. 2(*ga*) mentioned in the notice published in the Newspaper dated 07.09.2018, for the aforesaid period of 30 days.

It is thus directed that the respondent Bank shall not take any coercive action for physical possession of the property at serial no. 2 (*ga*) as stated above for the aforesaid period of 30 days.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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