IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16650 of 2017

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Indian Bank through the Authorized Officer/Chief Manager, Patna Main Branch, Ground Floor, Biscomaun Bhawan, West of Gandhi Maidan, Patna-800001.

... ... Petitioner/s

Versus

1. The Union Of India through the Presiding Officer, Debts Recovery Tribunal, 2nd Floor, 'A', 'B', & 'F' Wings, Karpuri Sadan, Ashiana Digha Road, Near Rajeev Nagar Thana, Patna-800025.
2. M/s Kamna Enterprises, Khaas Mahal Road No.01, Chiraiyatard Road, Patna through its Proprietor Sri Anand Shankar, presently residing at 403, Rama Braj Apartment, Near Alpana Market, Patliputra Colony, Patna-800013.
3. Dr. (Mrs.) Amita Verma, Amrit Nursing Home, Rajkumarganj, Darbhanga.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17299 of 2017

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Dr. (Mrs.) Amita Verma W/o Dr. Ashok Kumar R/o Amrit Nursing Home, P.O. Rajkumar Ganj, P.S. L.N. Mithila University Campus Darbhanga , Distt. Darbhanga.

... ... Petitioner/s

Versus

1. The Authorized Officer, Indian Bank, Patna Main Branch, Biscomaun Bhawan, West Gandhi Maidan, Patna
2. Branch Manager, Indian Bank, Patna Main Branch, Biscomaun Bhawan, West Gandhi Maidan, Patna.
3. M/S Kamna Enterprises, Khasmahai Road No. 1, Chiraiyatand Road, Patna through its Proprietor Shri A S/o late Hardeo Narayan Sinha R/o Khasmahal Road No 1 chiraiyatand Road, Patna Presently residing at 403, Rama Braj Apartment Near Alpana Market , Patliputra Colony, Patna.
4. Sri Hardeo Narayan Sinha (Since deceased) S/o late Amarchand Lal through legal heirs;

4.1. Smt. Kumkum Sahay D/o late Hardeo Narayan Sinha

4.2. Shri Krishna Mohan Kumar Sinha S/o late Hardeo Narayan Sinha

4.3. Smt. Rupa Sinha D/o late Hardeo Narayan Sinha

4.4. Smt. Seema Sinha D/o late Hardeo Narayan Sinha

4.5. Smt. Indrani Kumar D/o late Hardeo Narayan Sinha

4.6. Shri Anand Shankar S/o late Hardeo Narayan Sinha
All R/o Village- Simra, P.S. Sadar, Distt. - Darbhanga.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 16650 of 2017)
For the Petitioner/s : Mr.Dr. Binay Kumar Singh, Adv.
For the UOI : Mrs.Kanak Verma, CGC
For the Respondent Nos.2&3: Mr. Arbind Kumar Jha, Adv.
(In Civil Writ Jurisdiction Case No. 17299 of 2017)
For the Petitioner/s : Mr.Arbind Kumar Jha, Adv.
For the Respondent/s : Dr. Binay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 26-08-2019 Both these writ applications have been heard together on the request of the learned counsel representing the petitioners in those cases.

The petitioner in CWJC No.16650 of 2017 is Indian Bank whose Authorized Officer had initiated action against the borrower and took over the possession of the secured asset. After taking over the possession, the secured asset was sold to petitioner in CWJC No.17299 of 2017. By the impugned judgment dated 19.09.2017 passed in S.A. No.8 of 2017 the Presiding Officer, Debts Recovery Tribunal has after condonation of delay in filing of the application under Section 17 of the Act of 2002, allowed the SARFAESI application by holding that the bank had not followed the mandatory procedures as laid down under the Act of 2002 and the Rules framed thereunder while taking possession of the property, putting the property on auction sale and also while accepting the sale price from the auction purchaser. The auction sale held on 30.12.2011 and also possession notice dated 26.11.2011 have been set aside.

Dr. Binay Kumar Singh, learned counsel representing the bank submits that earlier he had been contesting the issue of limitation on the grounds inter alia that the Debts Recovery Tribunal had no statutory power to condone the delay because the provisions of the Limitation Act, 1963 would not apply to the application under Section 17(1) of the Act of 2002 but now in a judgment rendered by this Court today itself in the case of Rahmatullah Vs. The Authorized Officer-cum-Chief Manager, Central Bank of India & Ors. (CWJC No.17999 of 2017) since this Court has taken a view that the provisions of the Limitation Act, 1963 would apply to the application under Section 17(1) of the Act of 2002, the said issue stands settled. Learned counsel, however, submits that there are various other issues which are required to be considered in order to come to a conclusion that the Debts Recovery Tribunal is not justified in reaching to a conclusion that there was any non-observance of the mandatory provisions of law as regards the possession notice or the auction sale in question.

Mr. Arbind Kumar Jha, learned counsel representing the auction purchaser is petitioner in CWJC No.17299 of 2017. It is his contention that the Debts Recovery Tribunal was not justified in entertaining the securitisation application at the instance of the borrower in absence of the owner of the property who had mortgaged the same.

In course of argument, however, learned counsel admits that the judgment dated 19.09.2017 is an appealable judgment in terms of Section 18 of the Act of 2002 before the Debts Recovery Appellate Tribunal.

Having heard learned counsel for the petitioner in both the writ applications, this Court is of the considered opinion that in the given facts and circumstances of the case where the securitisation application has been decided by the Tribunal on its own merit after thoroughly discussing the several issues of facts it would not be appropriate for this Court sitting in its writ jurisdiction to go behind the findings of facts as regards the demand notice, service thereof, issuance of possession notice and the procedures which were required to be followed in the matter of e-auction sale. It is not one of those cases where the issue of limitation has been decided by the Tribunal as a preliminary issue. In order to interfere with the judgment of the Tribunal, this Court would be required to go through the entire materials including the evidences. The legislatures in their wisdom had provided for appellate forum under the Act of 2002 which has been held to be a complete Code in itself. In the case of United Bank of India Vs. Satyawati Tondon & Ors. reported in (2010) 8 SCC 110 in paragraph 43 their Lordships of the Hon’ble Apex Court have observed as under:-

> “**43.** Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

In the aforesaid view of the matter, this Court is not willing to entertain the present writ application as the petitioner has got an adequate and equally efficacious remedy of appeal. The contention of Mr. Jha, learned counsel for the petitioner that the borrower could not have maintained a securitisation application in absence of the owner of the property who has mortgaged the same is not acceptable because Section 17(1) of the Act of 2002 has been construed widely and the word “any person aggrieved” will take within its fold the borrower against whom the SARFAESI action is initiated. The secured asset against which the possession notice is issued has its relevance to the loan advances obtained by the borrower and, therefore, the borrower can very well maintain the application against the action taking possession for sale of the secured assets. The presence of owner of the property would have no relevance where borrower have taken upon himself to challenge the SARFAESI action. To that extent, the submission of Mr. Jha, learned counsel representing the petitioner in CWJC No.17299 of 2017 is rejected.

The petitioner in both the writ applications will have liberty to seek their remedy in appeal before the Debts Recovery Appellate Tribunal and in case such appeal is preferred within a period of 30 days from today and if a question of limitation arises for consideration the same will be considered keeping in view that both the petitioners had moved this Court in its writ jurisdiction and, therefore, the period spent by them before this Court are required to be considered.

Both the writ applications stand disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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