IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4310 of 2019

==

Akhileshwar Prasad Singh, aged about 52 years, Male, S/o Late Brijnandan Prasad Singh, Resident of Mohalla- Ghughari Tand, Dandibag, New Colony, P.S. Civil Line, District- Gaya.

... ... Petitioner/s

Versus

1. The Regional Manager, State Bank Of India, Antaghat, Patna.
2. The Regional Industrial Officer, State Bank of Inida, A.P. Colony, Gaya.
3. The Authorised Officer, State Bank of Inida, A.P. Colony, Gaya.
4. The Branch Manager, State Bank of India, Purani Godown, K.P. Road, Gaya.
5. Shyam Sunder Prasad (Loanee) S/o Kishun Mahto Prop. M/S Friends Marketing Kushwaha Market, Koeribari, P.S. Civil Line, District- Gaya, Permanently residing at Village- Pirauta, P.S. Sirdala, Distt. Nawada.
6. Ramesh Kumar(Auction Purchaser) S/o Ramadhar Singh Resident of North Church Road, Gaya, Distt. Gaya.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr.Dharmendra Kumar Sinha, Adv.
For the Respondent/s : Mr.Kaushlendra Kumar Sinha

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 16-04-2019 Petitioner in the present case is aggrieved by the order dated 28.08.2018 passed in S.A. No.121 of 2017 by the Debts Recovery Tribunal, for the State of Bihar at Patna. By the impugned order the Debts Recovery Tribunal has refused to entertain the securitisation application of the petitioner on the ground of limitation.

The facts as reveal from the records would show that pursuant to SARFAESI action, the secured asset was put on 'e-auction sale' vide notice dated 15.02.2011 for recovery of a sum of Rs.10,47,816/- with interest and other charges. The petitioner was advised to move this Court to challenge the sale notice and, accordingly, a Civil Writ Application being CWJC No.7236 of 2011 was filed in this Court. On 18.11.2016 the said writ application was disposed of granting liberty to the petitioner to approach the Tribunal for ventilation of his grievance in accordance with law.

The petitioner, thereafter, filed the present securitisation application after about seven months i.e. on 22.06.2017. A plea was taken before the Tribunal that after the order of the Hon'ble High Court, the petitioner was not aware of the same as he was residing at Delhi with his family members and he came to know about the same only in the month of April, 2017. The Tribunal has refused to entertain this as a good and sufficient cause to condone the delay. The Tribunal has relied upon the Judgment of the Hon'ble Supreme Court in the case of **Basawaraj & Anr. Versus The Spl. Land Acquisition Officer** reported **in (2013) 14 SCC 81**. The relevant quoted part of the said Judgment is stated thus:-

> *"The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of*

bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

Learned counsel for the petitioner submits that because the petitioner was pursuing his remedy before this Court, the Tribunal should have condoned the delay of filing of the application after about six months.

On the other hand, learned counsel for the Bank submits that under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002, the limitation provided for filing of the securitisation application is 45 days. It is submitted that the securitisation application was filed after more than six months even as e-auction had been held in the year 2011 and the writ petition of the petitioner came to be disposed of on 18.11.2016. The petitioner was not acting diligently. Thus, in the given facts and circumstance, the Tribunal was fully justified in rejecting the application.

Having heard learned counsel for the parties and on perusal of the records, this Court finds no error in the order of the Tribunal so as to interfere with the same. In the case of **Binod Bihari Singh versus Union of India** reported in **(1993) 1 SCC 572** the Hon'ble Supreme Court has held that a statute of limitation is a statute of repose and bar of a cause of action is a court of law. In the same Judgment it has also been held that a bar of limitation may be considered even if it has not been specifically raised by the party.

In the present case, it is apparent that at the first instance, the petitioner moved this Court in the year, 2011 against 'e-auction sale notice'. The writ application was disposed of but thereafter it took more than six months time to the petitioner in approaching the Tribunal. The petitioner was apparently not acting diligently. This Court finds no reason to interfere with the impugned order.

The writ application is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

U			