IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2858 of 2019

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1. M/s. Mahadeoji Rice Mills Pvt. Ltd. through its Director, Mr. Chandan Rauniyar S/o Virendra Prasad Gupta resident of Ara Sasaram Main Road, Nokha, Rohtas, District- Rohtas, Pin- 802215.
2. Sri Virendra Prasad Gupta S/o Sri Bhola Prasad resident of Ara Sasaram Main Road, Nokha, Rohtas, District- Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Rohtas, District- Rohtas.
2. The Sub- Divisional Magistrate, Sasaram, District- Rohtas.
3. The Chief Manager cum the Authorised Officer Bank of India, Nokha Branch, Rohtas, District- Rohtas.
4. The Divisional Manager, Bank of India, Patna Division, 1st Floor, Chanakya Palace, R- Block, Patna, District- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondents no. 3 & 4 : Mr. Sanjay Singh Thakur, ADvocate
Miss Rashmi Bharti, AC to SC 21

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-06-2019 The petitioner in the present case is aggrieved by the order contained in Memo No. 76 dated 10.01.2019 issued by the District Magistrate, Rohtas in exercise of his power under Section 14(1-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (heareinafter referred to as the 'SARFAESI Act, 2002) whereby the District Magistrate has upon consideration of the application preferred by the Authorized Officer of the Bank directed the Sub-Divisional Magistrate, Sasaram (respondent no. 2) to provide administrative help to the respondent Bank in

accordance with law.

Although no one appeared on behalf of the petitioners, this Court has gone through the statements made in the writ application. It is not in dispute that the respondent Bank had granted cash credit facility up to limit of Rs. 3.75 Crores and a term loan facility of Rs. 4.13 Crores to the petitioners for running their rice unit which the petitioners availed. It is the case of the petitioners that initially the business grew and the petitioners were paying the dues as per contract but later on the business got slowed down and the petitioners failed to pay the bank's dues on time and as a result of non-payment of the dues the respondent Bank declared the petitioners' loan account as non-performing assets (NPA) with effect from 31.5.2018.

It is also not in dispute that the respondent Bank through its Authorized Officer sent a notice under Section 13 (2) of the SARFAESI Act, 2002 to the petitioners calling upon them to pay the entire outstanding of Rs. 8,13,28,916.73/- within sixty days. The petitioners submitted their objection under Section 13(3-A) of the SARFAESI Act, 2002 denying the outstanding as liabilities. The Bank replied to the said objection vide its letter dated 14.08.2018 and thereafter, proceeded to take possession of the secured assets in exercise of its power under

Section 13 (4) of the SARFAESI Act, 2002. The possession notice was published in daily Hindi Newspaper, however, the petitioners claimed that it was not served upon them.

It is apparent from the facts narrated in the writ application that despite action taken under Section 13 (4) of the SARFAESI Act, 2002 by the bank, the petitioners did not challenge the same in accordance with law before the Debts Recovery Tribunal. Even in the present writ application the same is not under challenge.

It appears that after taking symbolic possession of the property under Section 13 (4) of the SARFAESI Act, 2002, the Authorized Officer of the Bank submitted an application to the District Magistrate, Rohtas to make available the necessary administrative help and and Police force for taking physical possession of the properties mentioned in the application. The copy of letter written by the Authorized Officer of the Bank on 15.10.2018 to the District Magistrate, Rohtas is Annexure '5' to the writ application. Along with the application the Bank had given the details as required of the secured assets in the proforma and had requested the District Magistrate to issue appropriate direction to the concerned authorities to depute such force as may be necessary in order to provide physical possession of the secured assets. The District Magistrate, Rohtas has upon consideration of the request of the Authorized Officer of the Bank issued memo No. 76 dated 10.01.2019 which is impugned in the present writ application.

In the writ application a plea has been taken with regard to the declaration of the Account as NPA and further statements have been made with regard to charging of interest etc. which according to the petitioner is not in accordance with law laid down by the Hon'ble Supreme Court in case of **Central Bank of India Vs. Ravindra & Ors.** reported in **(2002) 1 SCC 367.**

Learned counsel representing the Bank submits that after action was taken by the Bank under Section 13 (4) of the SARFAESI Act, 2002, the petitioners had a cause of action available and remedy available before the Debts Recovery Tribunal by filing appropriate application under Section 17 of the SARFAESI Act, 2002 where they could have challenged the action of the Bank be it the matter of preparation of account or service of notice as the case may be but the petitioners did not think it just and proper to challenge the possession taking action of the Bank. It is submitted that even in this case the petitioner have not challenged the action of the Bank under Section 13(4) of the SARFAESI Act, 2002.

In the aforesaid circumstance submission is that where there is no challenge to the action of the Bank in taking possession in accordance with law, the challenge made to the order as contained in Annexure '6' to the writ application has no basis. It is submitted that the District Magistrate, Rohtas has having been satisfied issued the necessary order with direction as contained in Annexure '6' and no fault may be found with the same.

Having considered the materials available on the record and after hearing learned counsel for the Bank, this Court finds that there is no prayer in the writ application to challenge the action of the Bank under Section 13 (4) of the SARFAESI Act, 2002. The writ application nowhere states that the action under Section 13 (4) was ever challenged before the appropriate forum in accordance with law.

In the opinion of this Court if the action under Section 13(4) of the SARFAESI Act, 2002 has attained its finality and has not been disturbed by any competent court or forum, the action of the District Magistrate, Rohtas in issuing necessary direction as contained in Annexure '6' to the writ application on being satisfied with the facts and circumstances of the case as noticed above cannot be fault with.

This Court finds no merit in the writ application. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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