IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8726 of 2019

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Joydev Dhirendranath Mukherjee Son of Dhirendranath Mukherjee, Resident of Plot no. 10/03/01, 2nd Floor, Near Central Park, Jadavpur, P.O. Jadavpur University District- Kolkata.

... ... Petitioner

Versus

1. The Union of India through Ministry of Finance, Govt. of India, New Delhi.
2. The Presiding Officer, the Debts Recovery Tribunal for the State of Bihar at Patna, Karupri Thakur Sadan, Ashiana Digha Road, Patna.- 8000 25
3. The Central Bank of India, through its Regional Manager, Regional Office- Muzaffarpur.
4. M/S Shree Vastralaya and Readmade through its Proprietor Shashi Kumar Singh, Resident of Village- Kharagpur, P.S. Bhatolia, P.S. Desari, District- Vaishali.
5. Shri Shashi Kumar Singh S/o late Nathuni Singh, Resident of Village- Kharagpur, P.S. Bhatolia, P.S. Desari, District- Vaishali.
6. Smt. Sudama Devi W/o late Nathuna Singh Resident of Village- Kharagpur, P.S. Bhatolia, P.S. Desari, District Vaishali.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Raushan, Advocate
For the Respondent/s	:	Mr.S.D.Sanjay (Adsg)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 17-09-2019 Heard learned counsel for the petitioner, learned counsel for the Bank and learned counsel representing the respondent no. 6 as also the Union of India.

Petitioner in this case is aggrieved by only a part of the order dated 6th September, 2018 passed in S.A. 119 of 2018 by the learned Presiding Officer, Debts Recovery Tribunal, Patna (in short 'Tribunal') by which the learned Presiding Officer has held that the authorized officer (the petitioner) has initiated the SARFAESI action very negligently, therefore, the cost incurred by the respondent Bank while initiating the SARFAESI action be recovered from the salary of the authorised officer, as the Bank is run on public money.

Learned counsel for the petitioner submits that on the one hand the learned Presiding Officer has held in paragraph '15' of the impugned order that the respondent Bank has followed the mandatory procedures up to the stage of taking of the possession action and on the other hand the learned Presiding Officer has observed negligence on the part of the authorised officer of the Bank in the matter of initiation of SARFAESI action. It is submitted that the finding of the learned Presiding Officer with regard to the mandatory observance of the procedures up to the stage of possession notice would nullify the observation of the learned Presiding Officer that the authorised officer had acted negligently while initiating the SARFAESI action. Learned counsel submits that the SARFAESI action was initiated by issuance of the demand notice under Section 13(2), consideration of the objection thereto under Section 13(3a) and then by issuing possession notice under Section 13(4) as one of the measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002. If till this stage the authorised officer has followed the mandatory provisions, the initiation of the action cannot be said to be negligently done.

Learned counsel submits that in fact in respect of the issuance of sale notice it was found that respondent no. 6 was one of the guarantors being mother of respondent no. 5 had not been individually served with the sale notice. This may be a case of mistake on the part of the authorised officer but then a mere mistake while acting bonafide in discharge of his duties would not render him liable to pay the cost of the SARFAESI proceeding itself. It is submitted that the principles underlying the recovery of cost is well settled. It is only when an officer vested with the administrative or the statutory power acts unmindfully, irresponsibly, malafidely and exercises his power going beyond his jurisdiction and such exercise is found to be a colourable exercise of power, the question of payment of cost would arise and that may be realised from that officer who had acted irresponsibly. In the present case no such finding has been recorded against the petitioner.

Learned counsel for the Bank submits that the Bank would not oppose the writ application though pursuant to the order of the learned Presiding Officer of the Tribunal the Bank has issued a show cause notice to the petitioner with an intention to comply with the order.

Learned counsel for respondent no. 6 has opposed the writ application as according to him the whole action taken by the authorised officer has been found to be deficient due to non service of individual notice upon respondent no. 6 and, therefore, in such circumstance no fault may be found with the order of the learned Presiding Officer in directing the Bank to recover the cost incurred in initiation of the SARFAESI proceeding.

Having heard learned counsel for the parties and on perusal of the records, this Court finds much substance in the submission of learned counsel for the petitioner. In the present case there is a categorical finding in paragraph '15' of the order of the learned Presiding Officer that up to the stage of possession action all mandatory provisions have been followed by the authorised officer. Even though in respect of the sale notice it was found that the individual sale notice was not served upon the respondent no. 6 and that may be a case of negligence, there being no finding to the effect that the petitioner had been acting beyond his jurisdiction or had acted irresponsibly and unmindfully so as to cause harassment to the respondent no. 6, in the opinion of this Court, there was no reason for the learned Presiding Officer to direct the Bank to recover the entire cost of the SARFAESI proceeding itself from the authorised officer. In fact by directing so the learned Presiding Officer has missed on his own finding with regard to the fact that the authorised officer had followed all mandatory procedures till the possession notice. This being the position, in the opinion of this Court, the observations and directions of the learned Presiding Officer to recover the cost of the SARFAESI proceeding from the petitioner cannot be sustained. It is liable to be set aside, and, is accordingly set aside by this Court. No action is now required to be taken by the Bank against the Authorized Officer - petitioner.

The writ application is allowed.

(Rajeev Ranjan Prasad, J)

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