

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12232 of 2016

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Pankaj Kumar Agrawal, Son of Satya Narayan Prasad Agrawal, Resident of
301, Ranjeet Apartment Talpatra Complex, Budh Marg, Police Station
Kotwali, District - Patna

... .. Petitioner/s

Versus

1. The State Bank Of India through its Chairman State Bank Bhawan, Madam Cama Road, Nariman Point, Mumbai-400021.
2. Chief Manager, State Bank of India Maurya Lok Complex Branch, Patna
3. Rajiv Chandra Saraf Son of Late Chandra Saraf Opposite Durga Mandir Sharaf Market, Govind Mitra Road, Police Station Pirbahore, District-Patna.
4. Debt Recovery Tribunal, Patna
5. Recovery Officer, Debt Recovery Tribunal, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16939 of 2013

- =====
1. Rajiv Chand Sarraf, S/O Late Sri Chandra Sarraf Opposite Durga Mandir, Sarraf Market, Govind Mitra Road, Patna
 2. Sanjiv Chand Sarraf, Son Of Late Chandra Sarraf, Opposite Durga Mandir, Sarraf Market, Govind Mitra Road, Patna-1

... .. Petitioner/s

Versus

1. The State Bank Of India through Chairman, Nariman Point, Chaurch gate, Mumbai.
2. The Chief General Manager, State Bank Of India, Local Head Officer J.C. Road, Patna
3. The D.G.M., Network (One) S.B.I. Patna Main Branch, Patna
4. The A.G.B. (SARRB), S.B.I. 2nd Floor Gandhi Maidan, Patna Main Branch
5. The Branch Manager, S.B.I., Maurya Lok Complex, Patna-1
6. The Recovery Officer, li D.R.T. Patna, Bank Road, New Police Line Lodipur, Patna-1
7. The State Of Bihar Through District Magistrate, Patna
8. The Senior Superintendent Of Police, Patna
9. The Sub-Registrar, Patna
10. The Circle Officer, Patna
11. Pankaj Kumar Agrawal, Son of Satya Narayan Prasad Agrawal, Resident of 301, Ranjeet Apartment Talpatra Complex, Budh Marg, Police Station Kotwali, District - Patna



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12232 of 2016)

For the Petitioner/s : Mr.Sanjeev Ranjan, Adv.

For the Bank : Mr.Kaushlendra Kumar Sinha, Adv.

For Respondent no.3 : Mr. Rajendra Prasad, Adv.

(In Civil Writ Jurisdiction Case No. 16939 of 2013)

For the Petitioner/s : Mr.Rajendra Prasad, Adv.

For the Bank : Mr.K.K. Sinha, Adv.

For the State : Mr. Ravindra Kumar, Adv.

For the Respondent no.11: Mr. Sanjeev Ranjan, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 11-09-2019

CWJC No.12232 of 2016

Heard learned counsel for the petitioner, learned counsel for the bank and the private respondent-auction purchaser.

Petitioner in the present case is neither the borrower nor the guarantor of the loan which was availed by one M/s Aditya Agro Food Company and one Uttam Kumar Talpatra had stood as a guarantor of the loan by submitting the documents pertaining to his flat bearing no.301 and 302 of Ranjit Apartment, Talpatra Complex, Budh Marg, Patna.

The petitioner claims that he had entered in the flat as a tenant, but later on executed an agreement for sale of the flat with the guarantor Uttam Kumar Talpatra. He has been challenging the order passed by the Recovery Officer in R.P. Case No.202 of 2009 which has been initiated for satisfaction of the certificate of recovery issued by the Debts Recovery



Tribunal against the borrower and the guarantor in O.A. No.02 of 2009.

It appears from the records that the petitioner is challenging the orders dated 11.09.2012, 27.09.2012, 04.07.2012 and 12.10.2012 passed by the Recovery Officer in R.P. Case No.202 of 2009. He has also sought to challenge the order dated 05.05.2016 passed by the Recovery Officer directing the certificate holder bank to coordinate with Advocate Commissioner for vacating the auctioned property which has been reported to be under unauthorized possession.

It appears from the records that as back as on 13.11.2009 the Presiding Officer, Debts Recovery Tribunal passed a judgment and issued certificate of recovery for a sum of Rs.32,34,915/- upto 31.07.2008 with pendentelite and future interest at contractual rate @ 16% per annum from 01.08.2008 till the realization of the entire sum due and recoverable. There is nothing on record to show that the certificate debtor ever challenged the judgment and the certificate of recovery with any success. The admitted facts rather show that the certificate of recovery has attained finality. This petitioner is said to have entered into an agreement for sale on 16.02.2006 with guarantor wherein he agreed to purchase the flat no.301, Ranjit Apartment,



Budh Marg, Patna. It is his case that he has paid consideration amount of Rs.11,75,000/-, however, the payment particulars showing entire payment is not available on the record.

Be that as it may, it appears that during the recovery proceeding the petitioner appeared before the Recovery Officer and filed an objection petition taking a plea that the agreement for sale was made between him and the guarantor and that he had deposited a sum of Rs.40,000/- as token money with the bank. His objections were considered by the Recovery Officer and the same came to be rejected vide order dated 04.07.2012. Thereafter, the Recovery Officer proceeded for auction sale of the property. An order to this effect was passed on 11.09.2012 wherein the private respondent was declared successful as he had submitted highest bid of Rs.29,70,000/- for Lot No.A. The orders dated 04.07.2012 and 11.09.2012 are though appealable order before the Presiding Officer, Debts Recovery Tribunal in terms of Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993'), the petitioner did not challenge those orders. On 27.09.2012, the Recovery Officer rejected an application filed by one Sri Vikash Churiwal who was an unsuccessful participant in the public auction held on 11.09.2012. Thereafter



on 12.10.2012, the Recovery Officer took note of the fact that no application for setting aside the sale of the property was filed under Rule 60/61/62 of the Second Schedule of the Income Tax Act, 1961 read with Section 29 of the Act of 1993. The Recovery Officer, therefore confirmed the sale in favour of the auction purchaser. Again this order dated 12.10.2012 was not challenged before the competent forum by the petitioner. The order also took note of the fact that the property in question was attached vide order dated 09.12.2010 i.e. after the agreement of sale had come into force. The petitioner had come to know about the order of attachment still that order was never challenged by the petitioner and sale was allowed to be confirmed. These are the admitted facts.

Mr. Sanjeev Ranjan, learned counsel for the petitioner has argued that the Recovery Officer has acted wholly without jurisdiction and the sale has been confirmed giving a go-bye to the mandatory provisions of the Act of 1993 and the Rules framed thereunder. Learned counsel submits that since the sale suffers from jurisdictional error, the petitioner has challenged the same by filing the present writ application at the stage when vide order dated 05.05.2016 the Recovery Officer directed the bank to notify the petitioner to vacate the flat so that the transfer



may be affected.

Learned counsel for the bank has submitted that this writ application is fit to be dismissed on the ground of delay and laches as well as there being an alternative remedy which the petitioner failed to avail within the prescribed period of limitation. Learned counsel submits that from the narration of the facts stated in the counter affidavit it would appear that the petitioner is fighting a proxy litigation after the original borrower and the guarantor have already left the case and did not choose to challenge the order passed by the Debts Recovery Tribunal at any stage.

It is submitted that the writ application has been filed at least four years after the order was passed by the Recovery Officer rejecting the objection of the present petitioner, thus in order to keep intact the faith of the participants who are coming in the e-auction sale and to maintain the sanctity of the e-auction sale through process of the Debts Recovery Tribunal it is all the more necessary not to exercise the discretionary power of the Court under Article 226 of the Constitution of India in the matters where the petitioner has not only failed to avail the alternative statutory remedy of appeal but has invoked this Court's extra-ordinary jurisdiction after four years after the sale



in favour of the auction purchaser has been confirmed. Reference in this regard has also been made to the decision of the Hon'ble Supreme Court in the case of United Bank of India Vs. Satyawati Tondon & Ors. reported in (2010) 8 SCC 110 to submit that the Hon'ble Supreme Court has by way of word of caution observed that in the kind of these matters where it relates to recovery of public money writ application need not be entertained unless the parties have exhausted the statutory remedy.

Having heard learned counsel for the petitioner, the bank and the auction purchaser, this Court finds substance in the submission made on behalf of the bank. It has already been taken note of hereinabove that the petitioner had filed his objection in the recovery proceeding which was rejected on 04.07.2012 and thereafter the Recovery Officer proceeded for auction sale, the sale was conducted, the private respondent was declared successful as auction purchaser and after finding that no application for setting aside the sale of the property was filed within the prescribed period of limitation, the Recovery Officer confirmed the sale. All these orders have attained finality as those were not challenged by the petitioner before the appropriate forum within the prescribed period of limitation. In



this writ application which has been filed after four years from the date of those orders, this Court is reminded of the judgment of the Hon'ble Supreme Court in the case of Satyawati Tondon (supra), paragraph 43 of which reads 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 given facts and circumstances of the case, this Court is of the considered opinion that auction sale of the property through process of the Debts Recovery Tribunal has to be given some sanctity and it should not be allowed to remain open to challenge for a period ad-indefinitum. The writ application is not only fit to be rejected on the ground of there being an



alternative remedy which the petitioner failed to avail within the prescribed period of limitation but is also on the ground of delay and laches as the delay is such that the petitioner has made himself disentitled for the reliefs prayed in the writ application. It is also well settled in law that a writ of certiorari is to be issued not only on making out a legal issue and that alone cannot be a ground to exercise its' discretionary power of the Court under the extra-ordinary writ jurisdiction. The present writ application does not have any legal issues as it is an admitted position that petitioner had filed an objection which was rejected long back and that order has attained finality. This Court does not find any reason to entertain this writ application at this belated stage when the orders became final.

This writ application has thus no merit. It is dismissed accordingly.

CWJC No.16939 of 2013

I.A. No.6641 of 2016 has been filed by one Pankaj Kumar Agrawal, son of Satya Narayan Prasad Agrawal, resident of 301, Ranjeet Apartment Talpatra Complex, Budh Marg, Police Station-Kotwali, District-Patna for impleadment as party respondent to intervene in the matter. The proposed intervenor is in fact the petitioner in CWJC No.12232 of 2016.



I.A. is allowed. The intervenor is directed to be impleaded as party respondent no.11 in the writ application.

Heard the parties.

The writ application has been preferred by the Auction purchaser for a direction to the respondent authorities to handover the possession of the immovable properties which the petitioners have purchased in auctions. The respondent no.11 is opposing the writ application on the grounds which have been considered by this Court in CWJC No.12232 of 2016.

Since CWJC No.12232 of 2016 has been dismissed by this Court by the aforesaid reasoned order, CWJC No.16939 of 2013 is being disposed of with a direction to the respondent authorities to proceed in accordance with law for handing over delivery of possession to the auction purchaser.

(Rajeev Ranjan Prasad, J)

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