

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3784 of 2017

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Himanshu Son of Late Ravindra Nath Tiwary, R/o New Colony Pakri in the lane of Dr. Arshad Euram, District-Bhojpur at Ara-802301.

... .. Petitioner/s

Versus

1. The Oriental Bank Of Commerce Through Its Regional Manager, Regional Office, Chandpura Palace, 2nd Floor, Bank Road, Western Gandhi Maidan, Patna-1
2. The Authorized Officer, Oriental Bank of Commerce, Regional Office, Chandpura Palace, 2nd Floor, Bank Road, Western Gandhi Maidan, Patna-1.
3. The Branch Manager, Ara Branch, Oriental Bank of Commerce, Regional Office, South Ramna Road, Ara, District-Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Siddharth Harsh, Adv.
For the Respondent/s	:	Mr.Prabhat Kumar Sharan, Adv.
		Mr. Anant Kumar Sharan, Adv.
		Mr. Hemant Kumar Sharan, Adv.
		Mr. Jayant Kumar Sharan, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 20-08-2019 Heard learned counsel for the petitioner and learned counsel representing the Bank.

Petitioner in the present case is auction-purchaser of the land and building in question. It is his case that in fact when he came to hand-over the possession of the land and building the bank could not deliver him possession because the borrower had built a house in the middle portion of the land which was not the mortgaged land, in such a way that the construction has gone over the mortgaged properties as well and now the house is standing on the mortgaged as well as not mortgaged land.



Learned counsel has raised a lot of grievance in the manner in which the sale notice was published and then sale certificate has been issued, but till date possession could not be handed over to the petitioner.

Learned counsel for the bank submits that the bank is ready to hand over possession of the land and building. At the same time, learned counsel for the bank has made a submission that in the nature of the grievance raised by the petitioner it would be the Debts Recovery Tribunal which will be the competent tribunal to go into all such issues in exercise of its power under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the 'Act of 2002'). Learned counsel for the bank has relied upon a Division Bench judgment of the Hon'ble Delhi High Court in the case of Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank and others reported in I(2017)BC 742 (DB). It is submitted that the petitioner will come within the meaning of word 'any aggrieved person' as envisaged under Section 17 of the Act of 2002.

Having heard learned counsel for the parties and on perusal of the records, this Court prima-facie finds that there are



some issues of facts raised by the petitioner. His contention that the building is standing on the not mortgaged plot as well as the mortgaged plot and that is why the bank is unable to deliver the possession of the land and building would be required to be gone into with the support of cogent evidence. This Court sitting under Article 226 of the Constitution of India would not go into making such enquiries and record a finding based thereon. Learned counsel for the bank is correct in his submission that the word 'any aggrieved person' within the meaning of Section 17 of the Act of 2002 will take within its hold an auction-purchaser also who raises a grievance against the manner in which the sale has been conducted.

This Court thus while refusing to entertain the present writ application, grants liberty to the petitioner to move before the Debts Recovery Tribunal by filing an appropriate application in terms of Section 17(1) of the Act of 2002 and if any such application is preferred within a period of 30 days from today, the same shall be considered on its own merit and shall be not rejected on the ground of limitation.

Learned counsel for the bank has assured that the bank will provide all cooperation to the Debts Recovery Tribunal in arriving at an appropriate adjudication at the earliest



opportunity. This Court directs the Presiding Officer, Debts Recovery Tribunal to hear application if filed within a period of 30 days from today with some urgency because the matter relates to an auction sale which had taken place sometime in the year 2014 and the petitioner having deposited the entire sale consideration is deprived of the same.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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