

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11561 of 2019

1. Smt. Tara Devi, aged about 44 years, Gender – Female, Wife of Sri Raju Kumar Resident of Nagwa Bazar, Yakubpur, P.O.- Shorampur, Near Middle School, P.S.- Janipur, Phulwarisharif, District- Patna- 801515.
2. Shri Raju Kumar, Son of Shri Bharat Lal Resident of Nagwa Bazar, Yakubpur, P.O.- Shorampur, Near Middle School, P.S.- Janipur, Phulwarisharif, District- Patna- 801515.

... .. Petitioners

Versus

1. The Branch Manager, Bank of Baroda Walmi Branch, Phulwarisharif, District- Patna.
2. The Authorised Officer, Bank of Baroda, Regional Office, Anand Vihar, 4th Floor, Boring Road, Patna- 800001.
3. Shri Guddu Kumar Son of Shri Bijay Prasad Resident of New Chandpur Bela, Sheopath, P.O.- Jakkanpur, District- Patna.
4. Smt. Ruby Devi Wife of Shri Guddu Kumar Resident of New Chandpur Bela, Sheopath, P.O.- G.P.O., P.S.- Jakkanpur, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr.Ratnesh Nandan Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 03-09-2019 Heard learned counsel for the petitioners and

learned counsel representing the Bank.

Petitioners, in the present case, are aggrieved

by and dissatisfied with the order dated 20.03.2019

passed in S.A. No. 206/2018 by which the learned

Presiding Officer, Debts Recovery Tribunal, Patna has

refused to condone the delay in filing of the

securitization application under Section 17(1) of the



Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act 2002") and has dismissed the same leading to rejection of the SARFAESI action.

Learned counsel for the petitioners submits that in fact initially the petitioners were not aware of the ongoing SARFAESI action and on telephonic talk when she wanted to gather information, the same was not made available to her by the Bank. It is submitted that the learned Tribunal could not appreciate that in the given facts and circumstances the application for condonation of delay was required to be allowed.

On the other hand, learned counsel for the Bank submits that on her own admission it has rightly been held by the Tribunal that the petitioners had come to know about the SARFAESI Action in November, 2017, but then, they filed the securitization application on 17.11.2018 i.e. after one year.



Learned counsel for the Bank has also submitted that the impugned order is an appealable order however instead of filing an appeal the present writ application has been filed.

It is further submitted that the petitioners did not bring on record any material to demonstrate that they had ever contacted the Bank or had otherwise tried to gather information during this period, therefore, the plea taken by the petitioners that they were indulged in gathering information with regard to the SARFAESI action has rightly not been accepted by the Tribunal.

Having heard learned counsel for the parties and on perusal of the records, this court finds substance in the submission of learned counsel for the Bank. There is a finding in paragraph '4' of the impugned order based on the admission of the petitioners that they had come to know about the SARFAESI action in November, 2017. Further it is not the case of the petitioners that they had brought on record any material to demonstrate that



during the one year period from November, 2017 to November, 2018 they had indulged in gathering information. If there was no material to show that the petitioners were bonafidely involved in gathering information for all these period, in my considered opinion, the Debts Recovery Tribunal has rightly refused to condone the delay. In this connection, the judgment of the Hon'ble Supreme Court on which reliance has been placed by the learned Tribunal is extracted in paragraph '11' of the impugned judgment which is being reproduced hereunder for ready reference:

"11. The Hon'ble Supreme Court of India in the case of Basawaraj & Anr. Versus The Spl. Land Acquisition Officer, reported in [2013] 13 SCC 811 has held as under-

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.”

Although the writ application is required to be dismissed on the ground of there being an adequate alternative remedy of appeal against the impugned order, learned counsel for the petitioners has submitted before this court that the issue pertains to consideration of a limitation matter and therefore it may be heard on it's own merit.

In ultimate analysis, this court finds no reason to interfere with the impugned order. For the reasons stated above, the writ application stands dismissed.

Rajeev/-

(Rajeev Ranjan Prasad, J)

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