

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14236 of 2013

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Prafulla Kumar Singh Son Of Sri Ashok Kumar Singh Resident
Of Mohalla- Basudeopur, Chandi Asthan, P.S.- Kotwali,
District- Munger

... .. Petitioner

Versus

1. The State Bank Of India through its General Manager, State Bank of India, Head Office, Mumbai.
2. The Regional Manager, State Bank of India, Main Branch, Bihar, West of Gandhi Maidan, Patna
3. The Branch Manager, State Bank of India, Main Branch, Munger.
4. The Branch Manager, Bazar Branch, State Bank of India, Munger.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Manoj Kumar Jha, Advocate
For the Bank	:	Mr. Alok Kr. Choudhary, Advocate Mr. Nagendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 30-01-2019

Heard Mr. Ganpati Trivedi, learned senior
counsel representing the petitioner and Mr. Alok Kumar
Choudhary, learned counsel representing the State Bank of



India.

Petitioner, in the present case, has challenged the demand notice under Section 13(2) as also the possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002").

Learned senior counsel representing the petitioner submits that even though he is aware of the provision as contained in Section 17 of the SARFAESI Act, 2002, whereunder the securitization application may be filed before the Debts Recovery Tribunal assailing the impugned action of the Bank, still he has moved this writ application on the ground that the security interest created by the Bank was not having a sanction of law.

Learned senior counsel submits that in fact the petitioner was running a shop under the name and style of M/s Durga Traders. He had obtained a loan of Rs. 1 Lakh under Prime Minister Rojgar Yojana Scheme in March 2000. Thereafter the Bank was approached to enhance the loan



facility by way of cash credit account which was provided to the petitioner on deposit of the original title deed of the property which belonged to his father.

Learned senior counsel submits that under the Scheme no such security interest could have been taken by the Bank, therefore the security interest said to have been created in favour of the Bank has got no sanction of law.

On the other hand, Sri Alok Kumar Choudhary, learned counsel representing the Bank submits that the submission of learned senior counsel representing the petitioner has no basis. It is submitted that once the enhancement of the facility was sanctioned to the petitioner on the condition that he will have to provide the secured asset and a security interest will be created thereon which was accepted by the petitioner, at this stage, he cannot turn around and take a plea that the security interest had no sanction of law. It is further submitted that no law has been cited at the bar to show that while providing the cash credit facility to the petitioner by enhancement of the loan amount no such security interest could have been created.



It is also submitted that the submission of learned senior counsel that even though the proposal was to enhance the facility up to Rs. 5 Lakhs the same was enhanced to only Rs. 2 Lakhs, will be totally irrelevant at this stage. It is submitted that the writ application is misconceived and is fit to be dismissed.

After hearing learned senior counsel for the petitioner and learned counsel representing the Bank, this court is of the considered opinion that the submission of Mr. Alok Kumar Choudhary, learned Advocate has got substance and is fit to be accepted.

In a commercial deal once the Bank has sanctioned the facility after taking secured asset creating security interest thereon, the kind of plea being taken on behalf of the petitioner before this court in a writ application under Article 226 of the Constitution of India would not be fit to be entertained. The petitioner has got a remedy in law before appropriate forum/Tribunal which he may avail in accordance with law.

In case any question of limitation arises the



same will be considered keeping in mind the pendency of the writ application in this court since 25.07.2013.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.01.2019
Transmission Date	

