## IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.10981 of 2017**

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1. M/s Abhinandan Interexim Private Limited Regd. Office Room No. 1109, 11th Floor, Om Tower, 32, Chowringhee Road, Kolkata, West Bengal through Vikash Kumar Agarwala, S/o Sri Dhan Kumar Agarwala, R/o 3C/B, Pushp Vihar Apartment, Exhibition Road, Town and District-Patna, Bihar.
2. M/s Krishna Kanhaiya Private Limited, Regd. Office Room No. 209, Vrindavan Kunj, Exhibition Road, town & District – Patna through Sri Vikash Kmar Agarwala, Director, S/o Sri Dhan Kumar Agarwala, R/o 3C/B, Pushp Vihar Apartment, Exhibition Road, Town and District-Patna, Bihar.

... ... Petitioners

Versus

1. The State Of Bihar through Secretary, Department of Personnel and Administration, Govt. of Bihar, Patna.
2. The District Magistrate, Patna, Distt.-Patna, Bihar.
3. Authorized Officer, Stressed Assets Management Branch,State Bank of India, 5th Floor, Zonal Office Building, Judges court Road, Anta Ghat, Patna-800001.
4. Presiding Officer, Debt Recovery Tribunal, Karpuri Thakur Sadan, Aashiana Digha Road, Patna-800025.
5. M/s Agarwala's Polytrade Private Limited, Regd. Office at 20A Netaji subhash Road, 2nd Floor Kolkata through Mrs. Neena Agarwala, W/o Sri Anand Kumar Agarwal, R/o 406, Santosha Complex, Bandar Bagiocha, Dak Banglow Road, Patna.

... ... Respondents

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**Appearance :**

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| For the Petitioner/s | : | Mr.Arbind Kumar Jha, Advocate |
| For the Bank | : | Mr. Sanjeev Kumar, Advocate |
| For the Respondent/s | : | Mr.Ravi Verma, GP-4 |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**Date : 23-08-2019**

This court requires a substantial justice. Petitioner in this case is aggrieved by and dissatisfied with the judgment dated 07.07.2017 passed by the

Presiding Officer, Debts Recovery Tribunal, Patna in S.A. No. 139/2016.

By the impugned order and judgment the challenge to SARFAESI Action under Section 17 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act 2002") preferred by the petitioners has been rejected on the solitary consideration and finding that the petitioners had filed one CWJC No. 1851/2016 before the Hon'ble High Court at Patna for the same matter but the fact about filing of the writ application was not disclosed by the petitioners in the SARFAESI Action. It appears that the petitioners had moved this court earlier in CWJC No. 1851/2016 for the following reliefs:

> "(i) Reconstruction/Regularizing the Cash Credit Account No. 32916279882 for Rs. 3 Crores and Book Debt Limit Account No. 32995645881 for Rs. 14 Crores which came

> to be declared as Non Performing Assets (NPA) on 11.06.2015 as per the guidelines issued by Reserve Bank of India."

In the prayer portion of the writ application however while praying for issuance of a direction to the respondents to reconstruct/regularize the two accounts of the petitioner a prayer was made for interim relief in the following terms:

> "During the pendency of the present writ petition be further pleased to stay the further proceedings in connection with Demand Notice U/s. 13(2) of the Act dated 11.09.2015(Annexure 4)."

The writ application was presented before this court on 20.01.2016 which came to be registered on 27.01.2016. It appears that after filing of the writ application, the petitioners were advised to challenge the action under Section 13(4) of the SARFAESI Act, 2002 before the Debts Recovery Tribunal under Section 17(1) of the Act of 2002.

The petitioners thereafter presented the

Securitization Application before the Tribunal on 09.08.2016 i.e. after filing of the writ application. The petitioners were thereafter advised by their counsel to withdraw the writ application on 29.08.2016 with liberty to seek their remedy before the Debts Recovery Tribunal. This court allowed the petitioners to withdraw the writ application on 29.08.2016 with liberty as prayed. When these facts were brought to the notice of the Tribunal, the Tribunal took a view that the petitioners had suppressed the fact with regard to filing of the writ application and on this ground alone the Securitization Application of the petitioners has been rejected.

Learned counsel for the petitioners has assailed the impugned order, as according to him, the learned Tribunal could not appreciate that in the writ application there was no challenge to the

SARFAESI Action under Section 13(4) of the Act of 2002. It is submitted that in the relief portion the prayer for interim relief during pendency of the writ application cannot be said to be a challenge made to the action under Section 13(4) of the Act of 2002. It is submitted that in these circumstance there was no reason for the Tribunal to take a view that the petitioners had suppressed/concealed material facts. Learned counsel submits that the word 'material' is a word of significance and mere non-mentioning of the fact as to filing of the writ application which was for altogether a different relief cannot be said to be a concealment of material facts. It was not material also for the reason that the filing of the writ application for a different relief was no bar for the petitioners to maintain the securitization application.

Learned counsel for the Bank has opposed the writ application, as according to him, the interim relief prayed in the writ application would give an impression that the petitioners were challenging the SARFAESI Action. It is submitted that the petitioners had purposely concealed these facts while filing the securitization application.

Having heard learned counsel for the parties and on perusal of the records, this court is of the considered opinion that the learned Debts Recovery Tribunal has rejected the securitization application of the petitioners without looking into the prayers made in the writ application. The impugned order nowhere shows that copy of the writ application was before the learned Presiding Officer of the Tribunal. Had the tribunal gone through copy of the writ application, it could have been easily found that the writ application was filed for altogether a different relief and if to secure the main relief prayed in the writ application the petitioners had made a prayer for an interim order directing that the possession of the petitioners be not disturbed, the same cannot be taken as a ground to reach to a conclusion that while filing the securitization application the petitioners had concealed material facts. This court is of the view that a right to file an application under Section 17 of the Act of 2002 is in the nature of a first opportunity to the borrower to raise an objection against the action of the Bank, therefore, while ousting the petitioners from seeking their reliefs under Section 17(1) of the Act of 2002, more circumspection and care were required to be observed by the learned Tribunal. In any case, a substantial justice must prevail over the technical one.

This court finds no reason to approve the judgment of the learned Tribunal particularly when the court finds that on 29.08.2016 the petitioners had withdrawn the writ application with liberty to seek their remedy under the special statute itself before the Debts Recovery Tribunal and this court had granted the liberty.

The impugned order is, thus, set aside. The matter is remitted back to the Debts Recovery Tribunal, Patna for a fresh consideration to S.A. No. 139 of 2016 on it's own merit. It is made clear that the submissions of the parties except the one on which the Tribunal had earlier rejected the securitization application shall remain open.

This Writ Application stands allowed.

**(Rajeev Ranjan Prasad, J)**

Rajeev/-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 27.08.2019 |
| **Transmission Date** | |