# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.17764 of 2016**

Smt. Vishnu Devi W/o Mr. Deo Krishan Pd. Yadav R/o New Ganga Nagar, P.S.- Kewati, Distt- Darbhanga.

... ... Petitioner

Versus

1. U C O Bank Zonal Office through Branch Manager, Maurya Lok Complex, 4th Floor, Block-A, New Dakbunglow Road, Patna – 800001.
2. The Union of India through Recovery Office-I, Debt Recovery Tribunal, Patna.
3. Smt. Banita Jha W/o Ganga Prasad Jha R/o 28 Lahta Tumaul Suhat, Anchal-Allnagar, District- Darbhanga- 847423.
4. Ganga Prasad Jha S/o Buchai Jha R/o 28 Lahta Tumaul Suhat, Anchal-Allnagar, District- Darbhanga- 847423.

... ... Respondents

## <u>With</u>

**Civil Writ Jurisdiction Case No. 4506 of 2017**

Smt. Vishnu Devi W/o Mr. Deo Krishan Pd. Yadav r/o New Ganga Nagar, P.S. Kewati, Distt. Darbhanga.

... ... Petitioner

Versus

1. The State Of Bihar through Secretary Department of Personnel and Administration, Govt. of Bihar, Patna.
2. District Magistrate, Darbhanga, Distt. Darbhanga, Bihar.
3. UCO Bank, through Deputy Zonal Head, Zonal Office, Mauryalok Complex, 4th Floor, Block - A, New Dak Bunglow Road, Patna.
4. Smt. Binita Jha W/o Ganga Prasad Jha Resident of Village- Tarnaul , Alinagar, Darbhanga, Distt- Darbhanga.

... ... Respondents

**Appearance :**

(In Civil Writ Jurisdiction Case No. 17764 of 2016)

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| For the Petitioner/s | : | Mr.Arbind Kumar Jha, Advocate |
| | | Mr. Vijay Kumar Verma, Advocate |
| For the Bank | : | Mr. Ranjeet Kumar Pandey, Advocate |
| For the Respondent/s | : | Mr. Sanjay Kumar, Advocate |
| | | Mr. Pankaj Kr Jha, Advocate |

(In Civil Writ Jurisdiction Case No. 4506 of 2017)

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| For the Petitioner/s | : | Mr.Arbind Kumar Jha, Advocate |
| | | Mr. Vijay Kumar Verma, Advocate |
| For the Bank | : | Mr. Ranjeet Kumar Pandey, Advocate |
| For the Respondent No.4 | : | Mr. Sanjay Kumar, Advocate |

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| | | Mr. Pankaj Kr Jha, Advocate |
| For the State | : | Mr. Ravi Verma, A.C. to G.P.4 |
| For the U.O.I. | : | Ms. Chhaya Mishra, C.G.C. |

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

**Date : 06-08-2019**

**Re.: C.W.J.C. No. 4506 of 2017**

Heard learned counsel for the petitioner, learned counsel for the Bank, learned counsel for the Auction Purchaser as also learned counsel representing the State.

Petitioner in the present case is aggrieved by and dissatisfied with the order dated 28.10.2016 passed by the Collector-cum-District Magistrate, Darbhanga by which pursuant to the order dated 24.05.2016 passed by the Recovery Officer, Debts Recovery Tribunal requesting him to provide adequate police force to handover possession of the auction property in favour of the auction purchaser, the Collector passed the impugned order directing the Superintendent of Police and Sub-Divisional Officer, Sadar Darbhanga to depute adequate police force so that the authorized officer of the bank may take possession of the property. The petitioner has challenged the entire proceeding before the Collector-cum-District Magistrate, Darbhanga in which the impugned order has been passed.

From the facts revealed and the previous orders passed by learned coordinate Bench of this court, it appears that in fact possession of the property had already been taken by the authorized officer of the bank. A seal was put on the property but later on the petitioner broke open the lock and entered into the property in question. When this fact was brought to the notice of learned coordinate bench of this court, this court took a serious note of the same and passed the order dated 17.12.2018 and 02.04.2019 which are quoted hereunder for a ready reference:-

> “**17.12.2018.** It is unfortunate that the Senior Superintendent of Police, Darbhanga is not properly responding to the queries made by this Court. They are the tools which provides information to this Court and, on that basis, the cases are adjudicated but, his callous attitude indicates that either he is ignoring the High Court's order or he is adamant to not to act upon the order passed by this Court and sometimes it compels the Court to pass a harsh order though never intended.
>
> On two occasions, this Court had asked the concrete information but, the information, in the manner it has been given, can be said that it is no information at all and, before passing a coercive order, this court would again give a chance to the Senior Superintendent of Police,

Darbhanga to inform this Court what action has been taken in connection with Laheriasarai P.S. Case No. 176 of 2017 and submit a report through the office of Administration Department, in failure to carry out this order, the Senior Superintendent of Police, Darbhanga will remain present, in person, before this Court along with the status report of this case personally so that this Court would come to a finality about the issue involved in the present case.

Put up this case on 17.01.2019 at the same position.

Let this order be communicated to the Director General of Police, Bihar and Senior Superintendent of Police, Darbhanga for strict compliance of this order."

**"02.04.2019.** Heard learned counsel for the petitioner, counsel for the State, counsel for the Bank as also counsel for the respondent no.4.

A proceeding was initiated under the Recovery of Debts and Bankruptcy Act, 1993. In pursuance thereof, the District Magistrate, Darbhanga, exercised power under Section 29 of the aforesaid Act but, learned counsel for the petitioner submits that the District Magistrate is not empowered to exercise the power under the aforesaid provision. This Court vide order dated 21.04.2017 had passed the interim relief which reads as follows:-

*"If the petitioner has not been evicted from the house or having not*

> *taking the possession of the same, the District Magistrate is restrained to evict the petitioner from the house. The Collector can take notional possession of the house."*

During argument, the petitioner had submitted, only notional possession was taken but, the Bank as well as the Purchaser has always emphatically stated the possession was taken from the petitioner, as the petitioner is a powerful person, later on, she entered into the house forcibly and, then, this Court asked the Superintendent of Police, Darbhanga to give a report about the allegation made by the Bank as well as the Purchaser. A report has been received showing that after putting a lock and sealing, the possession from the petitioner was taken but, the son and the husband of the petitioner had broken the lock and entered into the house.

It is nothing but, violating the order of the interim relief of this Court which cannot be tolerated in any manner by this court of law, is nothing but challenging the authority of the Court. The petitioner by wrong assertion obtained the order and under that coverage, broken the lock and illegally entered in the house.

Let the petitioner should leave the house forthwith, handover the key to the District Magistrate by tomorrow, the house will be sealed in presence of the petitioner, her son and the husband along with Purchaser of the property and the Bank and it will remain under

> seal till final disposal of the present case.
>
> If the petitioner fails to handover the key by tomorrow, this Court directs the District Magistrate as well as the Superintendent of Police including the Officer-in-charge of the police station concerned to forcefully evict the petitioner from the house, in question, and seal the same in the manner mentioned herein above.
>
> In violation to handover the key, in that circumstances, the petitioner will have to deposit a cost of Rs. 2,00,000/- to the District Magistrate, in failure, the same will be recovered as an arrear of land revenue.
>
> A report must also be submitted by the District Magistrate, Darbhanga to this Court on next appointed day.
>
> List this case on 09.04.2019 at the top of the list.
>
> Let a copy of this order be communicated to the District Magistrate, Darbhanga as well as the Superintendent of Police, Darbhanga."

From what appears now the order dated 28.10.2016 passed by the Collector-cum-District Magistrate, Darbhanga has already taken effect. Nonetheless Mr. Arbind Kumar Jha, learned counsel for the petitioner has argued before this court that the said order is liable to be held bad in law because while passing the order the District Magistrate had not followed the mandatory procedures laid down under the second schedule of the Income Tax (Certificate Proceedings) Rules 1916. It is also his submission that in fact very exercise of jurisdiction by the Collector-cum-District Magistrate, Darbhanga, in the present case, at the instance of the Recovery Officer was wholly illegal and without jurisdiction.

Learned counsel submits that it was a case in which after a certificate of recovery was issued by the Debts Recovery Tribunal the same was subjected to a recovery proceeding and the Recovery Officer was in seisin of the matter. It was the Recovery Officer who passed an order on 24.05.2016 and then on 09.06.2016 whereby he requested the Collector-cum-District Magistrate, Darbhanga to make available adequate police force so that possession of the property may be handed over to the auction purchaser.

It is submitted that the District Magistrate seems to have acted under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002"). However, in the present case, Section 14 of the SARFAESI Act, 2002 could not have been made applicable.

It is submitted that the entire proceeding before the Collector be set aside and the keys of the property which is lying with the Collector by virtue of the order of this court be handed over to the petitioner.

Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **C.N. Paramastvam Vs. Sunrise Plaza** reported in **(2013) 9 SCC 460** to submit that if the auction of a property has been conducted by Recovery Officer without following the provisions of Rule 57 Sch. II to I.T. Act, 1961, the action is liable to be held illegal and void. In the case of **C.N. Paramastvam** (supra) the Hon'ble Apex Court held that the provisions of Sections 25 & 29 read with Rule 57 & 58 of Sch.II of the Income Tax Act, 1961 are mandatory in nature.

Learned counsel has then relied upon another judgment of the Hon'ble Apex Court in the case of **Pattam Khader Khan Vs. Pattam Sardar Khan** reported in **(1996) 5 SCC 48,** to submit that in case of auction sale of an immovable property in execution of decree order XXI

Rule 95 CPC is applicable for delivery of possession of the property to the purchaser and there is a period of limitation fixed for the same which starts running from the date when sale becomes absolute on confirmation under Order XXI Rule 92(1) and not when certificate of sale is issued under Order XXI Rule 95 CPC. It is submitted that because the period of limitation provided under Article 134 of the Limitation Act, 1963 is only one year for delivery of possession from the date of confirmation of sale, in this case, since the delivery has not taken place within the given one year period of limitation the very remedy of the auction purchaser had become barred by limitation.

A counter affidavit has been filed on behalf of the Bank in which the chequered history of this case has been narrated. The Bank has disclosed that how in the year 2005 a term loan to the tune of Rs. 133 Lakhs as well as cash credit limit of Rs. 18 Lakhs were provided to the borrower on hypothecation of plant and machinery of cold storage as well as the collateral securities which were created by way of equitable mortgage of the leased land and cold storage and other properties.

The present petitioner happened to be the mother of the Managing Director of M/s Maurya Dhawaj Agrotech Private Limited and she stood as one of the guarantors by creating equitable mortgage of land and building standing in her name as Collateral security in favour of the Bank. The term loan was later one enhanced to Rs. 161.50 Lakhs from existing Rs. 133 Lakhs and Cash Credit Limit was also enhanced to Rs. 110 Lakhs from Rs. 18 Lakhs on certain terms and conditions. Then the Bank has narrated that how SARFAESI action was initiated, possession was taken and even auction sale notice was issued under Section 13(4) of the SARFAESI Act, 2002 on 26.12.2011, but then it could not take place as the matters went on litigated. The bank also filed O.A. No. 258/2011 under Section 19 of the Recovery of Debts and Bank Bankruptcy Act, 1993 (hereinafter referred to as the "Act of 1993") before the D.R.T., Patna against the borrower and guarantors for recovery of debts to the tune of Rs. 3,21,29,564/- up to 31.10.2011 along with further *pendente lite* and future interest. The Debts Recovery Tribunal vide it's judgment dated 27.08.2012 issued a certificate of recovery and then the said certificate of recovery was sent for it's satisfaction to the Recovery Officer in a proceeding being RP No. 273/2012.

It has been submitted before this court that the Recovery Officer vide it's order dated 17.01.2013 and 28.02.2013 (Annexure 'J' to the counter affidavit of the Bank) attached the mortgaged immovable properties. The order has attained finality. Again vide order dated 04.07.2013 passed in RP No. 273/2012 the Recovery Officer ordered to sell the property by auction sale on 29.08.2013, the proclamation of sale was made but the property could not be sold for one reason or another.

It is further case of the Bank that the property was again put on auction sale on 18.03.2016, but then the auction sale was to be extended to 19.04.2016 vide order dated 09.03.2016. E-auction sale notice was published fixing the date of auction sale on 19.04.2016. Copy of the notice dated 09.03.2016 has been brought on record as Annexure 'L' to the counter affidavit.

It further appears that as on 16.05.2016 the total outstanding amount calculated by the Bank came to Rs.

4,47,65,139/- with future interest and cost till realization. This time the E-auction sale successfully resulted in a sale in favour of respondent no. 4. What is required to be noticed are stated in paragraph nos. 25 & 26 of the counter affidavit of the bank which are recorded hereunder:-

> "25.That even after auction sale, it is evident from the order dated 24.05.2016 of the learned Recovery Officer, D.R.T. that the certificate debtor had promised to turn with the requisite D.D. on 23.05.2016 but they failed to turn up and as such the sale was confirmed and accordingly a sale certificate dated 24.05.2016 was issued in favour of respondent no. 4 (Annexure – E of the counter affidavit filed on behalf of the respondent no. 4). It is further stated that vide order dated 01.06.2016, an Advocate Commissioner was appointed by the Recovery Officer for execution of order dated 24.05.2016 for handing over the possession of the auction property to the purchasers by the C.H. Bank. The District Magistrate and Senior Superintendent of Police were also directed to extend all administrative and police support to the learned Advocate Commissioner to carry out peaceful handing over the possession and accordingly Senior Manager of UCO Bank Darbhanga Branch as well as Advocate Commissioner filed petition on 15.06.2016 and 19.06.2016 respectively before the District

> Magistrate/Collector, Darbhanga and requested to provide needful assistance as well as protection for delivery of possession of auction property to the auction purchaser and vide order dated 28.10.2016 the District Magistrate-cum-Collector, Darbhanga in compliance to the order passed by learned D.R.T. directed the Sub Divisional Officer, Sadar, Darbhanga for delivery of possession to the auction purchaser.
>
> 26. That it is relevant to mention here that from Annexue-H of the counter affidavit filed on behalf of the respondent no. 4, it is evident that the petitioner was directed by the Sub Divisional Magistrate to vacate the property in question by 25.03.2017 thereafter on 23.03.2017 the petitioner filed an application before the Collector-cum-District Magistrate, Darbhanga and assured to vacate the premises on 05.04.2017 but she could not abide by her undertaking thereafter in compliance to the order passed by the learned D.R.T., the possession of the sold property was given to the respondent no. 4 on 08.04.2017 in presence of Circle Officer, Sadar, Darbhanga, Police Inspector, Laheriasarai Darbhanga Darbhanga and Advocate Commissioner."

Let it be recorded that the counter affidavit of the Bank was served upon learned counsel for the petitioner on 26.07.2017 but on record there is no rejoinder to the counter affidavit of the Bank and there is no denial of the fact that the petitioner had filed an application before the Collector-cum-District Magistrate, Darbhanga and had assured to vacate the premises on 05.04.2017, but she did not abide by her own undertaking.

Mr. Ranjeet Kumar Pandey, learned counsel for the Bank has also drawn the attention of this court towards the uncontroverted fact stated in paragraph 25 and 26 of the counter affidavit and then by pointing out his stand taken in paragraph 29 of the counter affidavit it has been contended before this court that the conduct of the petitioner who is one of the certificate debtors must be taken note of while considering her request to grant relief by invoking the extraordinary writ jurisdiction of this court which is a power in the nature of a discretionary power exercised by a writ court. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of **ITC Ltd. Vs. Blue Cost Hotel Private Limited** reported in **(2018) 15 SCC 99,** to submit that even if this court finds that any of the mandatory provisions has not been followed or that the District Magistrate had not been approached by the Auction

Purchaser, this court need not exercised it's extraordinary power to interfere with the impugned order because any interference at this stage would be against the public interest. According to learned counsel the public interest lies in recovery of huge outstanding amount from the sale of the mortgaged property as those are the tax payers money and must come back with the Bank.

Mr. Sanjay Kumar learned counsel for the auction purchaser has also appeared and submitted before this court that in fact against the orders passed by the Recovery Officer the petitioner had a remedy available in law under Section 30 of the Act of 1993 by filing an appropriate appeal before Presiding Officer, D.R.T. In this case the order passed by the Recovery Officer from time to time has attained finality.

**Consideration**

Having heard learned counsel for the parties and on perusal of the records, this court is of the considered opinion that it is not a fit case in which extraordinary power under Article 226 of the Constitution of India need be exercised to quash and cancel the impugned order passed by the Collector-cum-District Magistrate, Darbhanga. It is not in dispute that the petitioner is a certificate debtor under a certificate of recovery issued by the D.R.T. which has attained finality. It is also not in dispute that in order to satisfy the certificate a Recovery proceeding was going on before the Recovery Officer and the Recovery Officer had passed order directing to take steps for auction sale of the property. The order of the Recovery Officer was an appealable order, but, then, no statutory appeal was preferred by the petitioner. The sale was conducted lastly on 19.04.2016 after much resistance and some litigations at the instance of certificate debtors. It is also not in dispute that after the sale was conducted and the private respondent had been declared successful bidder, the Certificate debtors appeared before the Recovery Officer and promised to come back with payment of the outstanding amount, but, then, the certificate debtors failed to abide by their promise. Annexure 'M' series is the order dated 24.05.2016 passed by the Recovery Officer in which he has recorded as under:-

"RP No. 273/2012
Uco Bank, Darbhanga
Vs.
M/s Maurya Dhawaz Agrotech & others

Despite having undertaken to deposit the dues on more than one occasion, the certificate debtor has failed to deposit the same. The certificate debtor had promised to turn up with the requisite DD on 23.05.2016, which they failed. This court waited for the certificate debtor to deposit the requisite DD even today, but certificate debtor failed to turn up even today.

As regards the delay in payment of poundage fee, the auction purchaser was directed to deposit the same for the delayed period @ 12% p.a. for 16 days through either IPO or DD, which they have deposited.

Perusal of the records shows that in RP case no. 273/2012, arising out of OA 258/2011, the following immovable property of the certificate debtors was attached vide order dated 28.02.2013.

The immovable property, i.e.

The details of property in the name of Smt. Vishnu Devi W/o Sri Deo Krishna Prasad Yadav, resident of Mauza-Dhalwan, P.S.-Kewati, District – Darbhanga, Mauza-Haveli Darbhanga, Mohalla-Bhatiyari Sarai, P.S. - Laheriasarai, Naka No.-5, Ward no.17, M.S. Tauzi no. 3331, Khewat No.-24, Thana No. 458 and 509, Khata no.-269, Khesra no.-883, Sub Registry and District-Darbhanga. Total area One Kattah Five Dhur and fifty eight dhurki.

Bounded as North-6' Rasta after that Vendor, South-Bhola Sahu, East-Smt. Laxmi Devi, West-Municipal Road.

Since the certificate debtors did not pay the decreetal dues to the certificate holder bank, the attached property was ordered to be sold in Public Auction vide order dated 05.2.2016 and 09.3.2016. Accordingly the auction was conducted as scheduled on 19.04.2016.

Mrs. Banita Jha W/o Mr. Ganga Prasad Jha, Tumaul, Anchal Alinagar, District-Darbhanga was declared the highest bidder for the auctioned property lot V at Rs. 44,05,900/- (Rupees forty four lacs five thousand nine hundred only). The purchaser has deposited the entire purchase amount and poundage fee.

In view of the facts and circumstances mentioned above, the following orders are hereby passed.

***ORDERS***

1. The sale of the Immovable property with the following description is hereby ordered to be confirmed.

The details of property in the name of Smt. Vishnu Devi W/o Sri Deo Krishna Prasad Yadav, resident of Mauza-Dhalwan, P.S.-Kewati, District – Darbhanga, Mauza-Haveli Darbhanga, Mohalla-Bhatiyari Sarai, P.S. - Laheriasarai, Naka No.-5, Ward no.17, M.S. Tauzi no. 3331, Khewat No.-24, Thana No. 458 and 509, Khata no.-269, Khesra no.-883, Sub Registry and District-Darbhanga. Total area One Kattah Five Dhur and fifty eight dhurki.

Bounded as North-6' Rasta after that Vendor, South-Bhola Sahu, East-Smt. Laxmi Devi, West-Municipal Road.

2. Let an order of confirmation of sale be issued as per separate sheet in the prescribed form in favour of purchaser of the immovable property and accordingly the sale of the aforesaid property is ordered to be made absolute.

3. Let a certificate of sale of immovable property be issued in the prescribed form as per separate sheet in favour of purchaser of the immovable property.

4. Let a copy of this order along with copies of order of confirmation of sale and certificate of sale of immovable property be sent to sub Registrar and Circle Officer who

> exercise jurisdiction over the auctioned property for information and necessary action.
>
> 5. Let a copy of this order be sent to the district Magistrate, Senior Superintendent of Police, and Local Police Station for information and necessary action through the C.H. Bank.
>
> 6. Let a copy of this order be sent also to the concerned parties.
>
> Put up on 09.6.2016.
>
> (Kumar Pranav)
> Recovery Officer."

In the aforementioned circumstances this court finds that even after the private respondent was declared successful bidder the Recovery Officer was waiting for the certificate debtors to come forward with payment but when despite waiting, the certificate debtor did not come to deposit the amount, the Recovery Officer proceeded to confirm the sale. The order dated 24.05.2016 is thus self-speaking. This order dated 24.05.2016 has not been challenged by the petitioner, hence, it has also attained finality.

After passing of the order dated 24.05.2016 the Recovery Officer had to proceed to handover the possession of the property to the auction purchaser and for that reason he passed an order on 01.06.2016 requesting the District

Magistrate, Senior Superintendent of Police and and Local Police Station to extend all administrative and police support to learned Advocate Commissioner to carry out peaceful handing-over of possession. The order dated 01.06.2016 is again not under challenge. In these circumstances the District Magistrate passed the order dated 28.10.2016 directing the Superintendent of Police and the Sub-Divisional Police Officer to provide adequate police force to help the authorized officer of the Bank and the Advocate Commissioner in handing over possession of the property to the auction purchaser, this court finds no fault with the order passed by the Collector-cum-District Magistrate, Darbhanga. The submission of Mr. Jha that the Collector had no jurisdiction to pass the order dated 28.10.2016 is without any substance and seems to be based on a misconception of law. In the opinion of this court the District Magistrate had rightly acted upon the order passed by the Recovery Officer under the Act of 1993 in helping out the Advocate Commissioner in handing-over possession of the property.

This court has taken note of the conduct of the petitioner times and again. Before the Recovery Officer the petitioner got opportunity to deposit the amount and save the property but then the certificate debtor including the petitioner did not come forward to pay the certificate amount.

The learned coordinate Bench has in it's detailed orders which have been taken note of hereinabove observed as to how this petitioner/certificate debtors forcibly entered into the property to grab the same and then this court had to interfere. The conduct of the petitioner is such that the contention of Mr. Jha that the mandatory provision of law and procedures have not been followed would not appeal to this court, because provisions which are mandatory in nature are followed in order to deliver justice after giving an opportunity to the parties concerned to be heard and take an appropriate step in the matter. Even a mandatory provision may be waived and despite non-observance of mandatory provision a writ court can deny to exercise it's discretion to grant relief to a party by taking note of his conduct. In this case, petitioner is bound to lose on both the counts. The court has not found any non-compliance with the provisions of law on the part of District Magistrate in compliance with the order of the Recovery Officer and at the same time has found that the conduct of the petitioner is such that it does not warrant any interference and exercise of discretionary power by this court. The order of Recovery Officer have attained finality. There is no applicability of the judgments of the Hon'ble Supreme Court on which reliance has been placed by learned counsel for the petitioner for the simple reason that in this writ application the sale is not under challenge.

The writ application has no merit. It is dismissed accordingly.

The keys of the property be handed over to the auction purchaser and he be allowed to remain in possession forthwith.

**Re.: C.W.J.C. No. 17764 of 2017**

In this writ application the petitioner has sought declaration that for non-compliance of Rule 57 of Sch.II of the Income Tax Act, 1961 it will be deemed that no sale of property has taken place in Execution Case being R.P. No. 273/2012 in the eye of law. Petitioner has further prayed for issuance of a direction to the Recovery Officer to proceed under Rule 58 of the second schedule, as according to him, the non-compliance of Rule 57 renders the sale proceeding a complete nullity. Rule 57 and 58 of the Sch. II of the Income Tax Act, 1961 are as under:-

> **"57. Deposit by purchaser and resale in default. -** (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.
>
> (2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.
>
> **58. Procedure in default of payment.-** In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold."

Once again reliance has been placed on the judgment of Hon’ble Apex Court in the case of **C.N. Paramastvam Vs. Sunrise Plaza** reported in **(2013) 9 SCC 460.** In course of argument, Mr. Jha, learned counsel for the petitioner submits that there was no proper public notice of sale which will be evident from perusal of Annexure ‘5’ to the writ application. It is submitted that the Recovery Officer did not take a view as to why the property at serial no. 4 is required to be sold and how it is necessary to satisfy the certificate. Learned counsel has also submitted that in fact the auction purchaser had not deposited the 25% of the auction amount immediately and the balance amount within the next 15 days time. On these grounds learned counsel submits that this court should declare that the sale of the property is a nullity. He has also relied upon the judgment of the Hon’ble Supreme Court in the case of **Rao Mahmood Ahmad Khan V. Ranbir Singh** reported in **1995 Supp. (4) SCC 275**.

On the other hand, learned counsel for the Bank has opposed this writ application. It is submitted that at the first instance the writ application is not fit to be entertained for a declaration that the sale of the property is a nullity. Learned counsel submits that such declaration cannot be sought by a certificate debtor in a writ application particularly when the certificate debtor remained contended with the order passed by the Recovery Officer from time to time and none of his orders were challenged by filing an appropriate appeal in terms of Section 30 of the Act of 1993.

Learned counsel has also shown from Annexure 'D' to the counter affidavit of the auction purchaser which is the statement of the Bank account that the 25% of the bid amount was immediately deposited on the very next day and then the balance amount of Rs. 33,08,340/- was also deposited on 02.05.2016. In this regard, attention of this court has been drawn towards statements made in paragraph 9 & 10 of the counter affidavit. Let it be recorded that counter affidavit of the auction purchaser is available in the file of CWJC No. 4506/2017 and those statements have not been controverted by the petitioner by filing any rejoinder. This court has already taken note of the entire facts and circumstances of the case while deciding CWJC No.

4506/2017. It is evident from the record that even on the date of auction sale and thereafter the petitioner was given opportunity to come with the outstanding amount which the petitioner and the certificate debtor failed to pay and thereafter the sale has already been confirmed. The order of confirmation of sale has not been challenged by the petitioner by filing an appropriate appeal in terms of Section 30 of the Act of 1993. Mr. Jha, learned counsel for the petitioner has contended that against the order passed by the Recovery Officer in the matter of sale of the property in question provision of Section 30 would not be applicable, but this court is unable to agree with the submission of learned counsel for the petitioner. Section 30 of the Act of 1993 reads as under:-

> **"30. Appeal against the order of Recovery Officer** – (1) Notwithstanding anything contained in Section 20, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.
>
> (2) On receipt of an appeal under sub-section (1), the Tribunal may, after

> giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under section 25 to 28 (both inclusive).
>
> **30-A. Deposit of amount of debt due for filing appeal against orders of the Recovery Officer** – Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent of the amount of debt due as determined by the Tribunal."

An order directing attachment and sale of immovable property is one of the modes of recovery of debts in terms of Section 25(a) of the Act of 1993, hence it is a power exercised by Recovery Officer under Section 25.

Since the petitioner has not chosen to challenge the order of the Recovery Officer before the learned Tribunal, it would not be in the fitness of the things to accept this writ application and issue a declaration in the nature being sought for on behalf of the petitioner.

This writ application as well has no merit and the same is dismissed.

**(Rajeev Ranjan Prasad, J)**

Rajeev/-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 13.08.2019 |
| **Transmission Date** | |