IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4095 of 2017

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1. Gulab Cold Storage (P) Ltd., A Company represented by one of its Directors, Kalam Khan, having its registered office at 53, G.T. Road (N), Police Station- Golabari, District- Howrah-(West Bengal)
2. Azad Khan Son of Basir Ahmad Khan, One of the Directors of Gulab Cold Storage (P) Ltd., resident of Chak Manjhan, P.O.- Belsand, P.S.- Barauli, District- Gopalganj.

... ... Petitioner/s

Versus

1. The Union Of India through the Recovery Officer, Debt Recovery Tribunal, 2nd Floor, Karpuri Thakur Sadan, Ashiana Digha Road, New Rajiv Nagar Thana, Patna-25.
2. The Debt Recovery Tribunal Bihar, Patna.
3. The Recovery Officer, Debt Recovery Tribunal , Bihar, Patna.
4. The Presiding Officer, Debt Recovery Tribunal, Bihar, Patna.
5. The State Bank of India, having its Office at State Bank Bhawan, Corporation Centre Madame Came Marg, Mumbai, Maharashtra-21.
6. The Authorised Officer, State Bank of India, SRMB Branch, having its Office at 5th, Floor, Zonal Office Building, J.C. Road, Patna, Bihar.
7. The State Bank of India, Main Branch, Gopalganj, Mounia Chowk, Gopalganj, Bihar through its Branch Manager.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uma Shankar Prasad, Sr.Adv.
For the SBI	:	Mr. Santosh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

4 26-08-2019 Heard learned senior counsel for the petitioners and learned counsel representing the Bank.

The petitioners in the present case are seeking quashing of the valuation report of the mortgaged properties as contained in Annexures-3, 4 and 5. It is based on this valuation report that a public e-auction of the properties has taken place on 29.09.2016. The petitioners are now challenging the e-auction sale of those properties on the ground that the mortgaged properties were not properly valued.

Learned counsel representing the Bank submits that the writ application is not a remedy for the reliefs prayed in the writ application. It is submitted that the Recovery of Debts and Bankruptcy Act, 1993 is a complete Code in itself. E-auction sale had taken place by virtue of the exercise of power by the Recovery Officer in terms of clause(a) of Section 25 of the Act of 1993. The order of Recovery Officer was an appelable order before the Presiding Officer, Debts Recovery Tribunal, but no appeal was preferred by the petitioners against the order of Recovery Officer. It is further submitted that in terms of the relevant provisions of the Rule 60, 61 and 62 of the Second Schedule of the Income Tax Act, 1961, the petitioners could have filed an objection to the auction sale within a period of 30 days but even that remedy was not availed of. It is further informed that now the e-auction sale has been finalized and in fact registered sale deed has already been executed in favour of the auction-purchaser.

Having heard learned senior counsel for the petitioners and learned counsel representing the Bank, this Court is of the considered opinion that the petitioners having failed to avail the statutory remedy in terms of Section 30 of the Act of 1993 within the prescribed period and further that the petitioners did not file an appropriate application for setting aside of the e-auction sale in terms of the aforesaid Rules of the Second Schedule of the Income Tax Act, 1961 read with Section 29 of the Act of 1993, it would not be appropriate for this Court to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India to entertain the challenge to the valuation report of the mortgaged properties. The sale has already taken place and registered sale deed has been executed. This being the position, this Court is not willing to entertain this writ application.

In case, the petitioners are advised to seek any other remedy in accordance with law, liberty is granted for the same and while pursuing such remedy if a question of limitation arises for consideration the same will be considered keeping in view the period spent by the petitioners before this Court in the present writ application.

(Rajeev Ranjan Prasad, J)

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