

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16615 of 2018

=====

Sangeeta Kumari W/o Sri Dharmendra Kumar Sharma R/o Mohalla - Adarsh
Nagar Mohanpur Road, Samastipur, PS Samastipur, District Samastipur.

... .. Petitioner/s

Versus

1. Bihar Gramin Bank Samastipur Branch through its Authorized Officer,
Mohanapur Road, Gayatri Complex, District-Samatipur.
2. State of Bihar through Principal Secretary, Department of Finance, Patna,
Bihar.
3. District Magistrate Samastipur, Government of Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mrs.Madhuri Kumari, Adv.
For the State	:	Mr.Himanshu Kumar Akela, AC to PAAG-2
For the Bank	:	Mr. Ranjeet Kumar Pandey, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 28-08-2019 Heard learned counsel for the petitioner and learned
counsel for the Bank.

Petitioner in the present case is challenging the two judgments of the Debts Recovery Tribunal. The first judgment came to be passed on 21.04.2016 passed in S.A. No.13 of 2016 by which the Debts Recovery Tribunal dismissed the securitisation application preferred by the petitioner against the possession notice issued by the Authorized Officer of the bank on 07.12.2015. The second judgment has been passed on 09.02.2018 in S.A. No.191 of 2017 by which the learned Tribunal has refused to quash the letter issued by the respondent bank addressed to the District Magistrate, Samastipur requesting



him to take physical possession of the secured assets and hand over the same to the Authorized Officer of the bank.

This writ application has been filed without exhausting the statutory remedy of appeal provided under the SARFAESI Act, 2002. It has also been filed almost two and half years after rejection of the first SARFAESI application preferred by the petitioner against the possession notice and six months after rejection of the second securitisation application.

In the aforementioned circumstance, learned counsel for the bank is correct in taking a plea that the petitioner if failed to avail her statutory remedy within the prescribed period of limitation, there is no reason as to why this writ application be entertained at this belated stage particularly keeping in view the observations of the Hon'ble Supreme Court in paragraph 43 of the judgment rendered in the case of **United Bank of India Vs. Satyawati Tondon** reported in (2010) 8 SCC 110. It is also informed that in fact the physical possession of the property has already been taken over. It is also submitted that the District Magistrate has already passed an order on the request of the bank for providing adequate force to take over physical possession of the property. The order passed by the District Magistrate is however not under challenge in the present writ



application.

In the given facts and circumstances of the case, this Court finds substance in the submissions of learned counsel for the bank. In the case of **Satyawati Tondon** (supra) what has been observed by the Hon'ble Supreme Court in paragraph 43 reads as under:-

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

This writ application having been filed two and half years after rejection of the first securitisation application and six months after the second securitisation application without



exhausting the statutory remedy, this Court finds no reason to entertain this writ application. It is dismissed accordingly. Liberty will however be available to the petitioner to seek her remedy before the appropriate forum, if so advised, in accordance with law. All contentions shall remain open for the parties.

(Rajeev Ranjan Prasad, J)

arvind/-

U			
---	--	--	--

