

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1683 of 2018

In

Civil Writ Jurisdiction Case No.17913 of 2016

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1. Afroz Alam, Son of Samsuddin Sekh
 2. Mohammadi Fatima Wife of Afroz Alam Both resident of Beside Red Colour Mall Building, Opposite Khiri Tree, Near Bright Jems Public School, Dargah Mohalla, Bettiah, West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. The District Magistrate, West Champaran at Bettiah
3. The Authorised Officer-cum-Senior Manager Indian Bank, Zonal Office, Recovery Cell, Govind Bhawan,
4. The Authorised Officer-cum-Senior Manager, Indian Bank, Bettiah Branch, Station Chowk, Suprya Road,
5. Mansur Alam Son of Jaleel Ahmad Resident of Mohalla- Dargah Bettiah, Police Station- Bettiah Town District- West Champaran.

... .. Respondent/s

with

Letters Patent Appeal No. 1739 of 2018

In

Civil Writ Jurisdiction Case No.13998 of 2017

Afroz Alam Son of Samsuddin Shekh Resident of Beside Red Colour Mall Building, Opposite Khiri Tree, Near Bright Jems Public School, Dargah Mohalla, Bettiah, West Champaran

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue Department, Govt. of Bihar, Patna
2. The Presiding Officer, Debts Recovery Tribunal, Bihar, Patna
3. The District Magistrate, West Champaran at Bettiah
4. The Authorised Officer-cum-Senior Manager Indian Bank, Zonal Office, Recovery Cell, Govind Bhawan, New Dak Bungloe Road, Patna- 800001
5. The Authorised Officer-cum-Senior Manager, Indian Bank, Bettiah Branch, Station Chowk, Suprya Road, Bettiah, West Champaran
6. Mansur Alam Son of Jaleel Ahmad Resident of Mohalla- Dargah Bettiah, Police Station- Bettiah Town, District- West Champaran



... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1683 of 2018)

For the Appellant/s : Mr.Nishant Kumar Sinha

For the Respondent/s : Mr.Md. Khurshid Alam- Aag12

(In Letters Patent Appeal No. 1739 of 2018)

For the Appellant/s : Mr.Nishant Kumar Sinha

For the Respondent/s : Mr.Md. Khurshid Alam

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 28-11-2019 In LPA No. 1683 of 2018 the appellants through the
instant appeal have prayed for the following relief:

“For setting aside the order/judgment dated
10.10.2018 passed in C.W.J.C. Nos. 17913 of 2016 by Hon’ble
Justice Smt. Nilu Agrawal, whereby the order dated 08.09.2016
passed in S.A. No. 28 of 2016 by the Debt Recover Tribunal,
Bihar, Patna has set aside in a mechanical manner without
appreciating the mandatory provision of Security Interest
(Enforcement) Rule, 2002 and also the law laid down by the
Apex Court.”

In LPA No. 1739 of 2018 the appellant through the
instant appeal has prayed for the following relief:

“For setting aside the order/judgment dated
10.10.2018 passed in C.W.J.C. Nos. 13998 of 2017 by Hon’ble
Justice Smt. Nilu Agrawal, whereby the order dated 18.09.2016



passed in S.A. No. 28 of 2016 by the Debt Recover Tribunal, Bihar, Patna has set aside in a mechanical manner without appreciating the mandatory provision of Security Interest (Enforcement) Rule, 2002 and also the law laid down by the Apex Court.

As per office report dated 27.11.2019, the private respondents stand appeared.

It is seen that in the impugned judgment dated 10.10.2018 passed in C.W.J.C. No. 13998 of 2017(Md. Afroz Alam Vs. the State of Bihar & Ors.) and analogous cases, the learned Single Judge has entertained one of the writ petitions on merits, whereas the other writ petitions stand dismissed on the ground of maintainability.

In our considered view, both the writ petitions ought to have been dismissed on the ground of maintainability. More so, in view of the decision rendered by the Apex Court reported in **2018(3) SCC 85 (Authorized Officer, State Bank of Travancore & Anr. vs. Mathew K.C.)** holding the statute i.e. SARFAESI Act providing complete mode and mechanism for adjudication of the disputes and the scope of writ jurisdiction, limited in nature, specific to the statute in issue and as such both the appeals are allowed.



The impugned judgment dated 10.10.2018 is set aside, leaving it open for the parties to take appropriate action in accordance with law.

All issues on merit are left open. For the present the petitioners have been pursuing the remedies before this Court, limitation shall stand excluded.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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