IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12018 of 2019

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Dropadi Devi Wife of late Bindeshwari Mishra, 156 Tel Bigha Rang Bahadur Road, Murli Hill Ke Najdik, District- Gaya – 823001.

... ... Petitioner

Versus

1. The State Bank of India through the Chairman- Cum-Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madame Cama Road, Mumbai- 400021
2. The Manager State Bank of India, Bajaar Branch, Gaya.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr.Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 27-06-2019 Heard learned counsel for the petitioner and learned counsel representing the Bank while the petitioner has filed an affidavit reiterating the submissions made on her behalf in this Court on 20.06.2019 as also giving an undertaking to comply with the said undertaking by making payment of 50% of Rs. 11,51,901/- immediately and the balance 50% in three installments within three months thereafter, the Bank has filed a counter affidavit in which a stand has been taken that as per Bank's instruction opportunity to the petitioner for taking back the asset and handing over the possession of the same any time after repossession can be given but before conducting the sale transaction provided the bank's dues are cleared in full and not in part thereof.

Learned counsel for the petitioner submits that on the day one itself he had placed before this Court the fact that the petitioner is a widow and having retired as a teacher, she is now living on the pension which she receives from her employer.

He has also submitted that the house in question is the only residential accommodation available to the petitioner and after her ouster from the house in course of repossession action by the Bank, she is living in a rest house at Gaya. It is submitted that even if the Bank is permitted to proceed with the e-auction sale which is fixed on 17th July, 2019, the entire transaction including payment of the e-auction amount by the auction purchaser, if any, is likely to take at least one month time, therefore, this Court sitting in its writ jurisdiction may find it a fit case where the extra writ jurisdiction may be exercised to grant relief to the petitioner while protecting the interest of the Bank.

It is submitted that the ultimate purpose of the ongoing proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act, 2002') to secure the outstanding loan amount, thus, when the petitioner has been making promise and is giving undertaking before this

Court that she would pay 50% of the outstanding amount immediately and rest 50% within three months thereafter, the same is required to be considered in its own facts and circumstances as it is well settled that law bends before justice.

Learned counsel further submits that as regards the other costs which has been charged by the Bank, the petitioner is not aware the nature of the charges, however, she has come to know that one of the charges being levied by the Bank is a sum of Rs. 2 Lacs on account of wages to the security guards for looking after the house after repossession in December, 2018, which according to him seems to be totally unreasonable because Bank is not expected to incur a sum of Rs. 35,000/- per month on the guard when in fact no guard is deputed in the premises. Learned counsel further submits that actual expenses incurred by the Bank on account including legal expenses and the advertisement expenses etc. will be paid by the petitioner within the aforesaid three months period. In sum and substance the submission is that the bonafide stand of the petitioner who is a widow and is facing hardships be considered by the writ court.

Learned counsel for the Bank has taken a stand in consonance with the pleadings made in the counter affidavit. It is her statement that while the petitioner has still an opportunity to save her residential house, she would be liable to pay off the entire outstanding dues of the Bank.

Having heard learned counsel for the petitioner and learned counsel for the Bank, this Court finds that it is a case where the petitioner has been able to make out a strong prima-facie case for exercise of the extraordinary writ jurisdiction. The Court is fully conscious of the legal position that in the SARFAESI matters normally the court will not exercise its writ jurisdiction and the financial institutions should be left to exercise its power conferred upon them under the statute such as the SARFAESI Act, 2002 to recover the outstanding dues but then in the facts of the present case where the petitioner has herself come forward to deposit the 50% of the outstanding amount immediately and is giving an undertaking to pay off the rest 50% within three months, the question is would it be just and proper or not for this Court to grant appropriate relief to the petitioner at this stage considering the hardships which she is facing and at the same time protecting the interest of the Bank. Had it been a case where the petitioner would not have come forward with a bonafide plea to pay off the entire dues within a reasonable time, like in several cases this Court has found, no interference could have been made but in this case this Court is willing to exercise its discretion under Article 226 of the Constitution of India in view of the submissions and undertakings being given by the petitioner.

This Court, therefore, directs that on the petitioner's depositing 50% of Rs. 11,51,901/- within one week from today, the possession of the secured asset be handed over to her forthwith. Thereafter, in terms of her own undertaking she will go on paying the rest 50% of Rs. 11,51,901/- in monthly installments and the whole payment will be made within three months from the date of handing over the possession of the secured asset to her. Breach of this undertaking would not only entitle the Bank to repossess the secured asset but would also invite a contempt of this Court.

After handing over the possession of the house to the petitioner, the Bank will make her available the details of the costs and expenses which the Bank is charging from her. It should be made available within one week thereafter and the petitioner will have an opportunity to raise her grievance, if any, against any such charges within two weeks thereafter. The grievance of the petitioner shall be considered by the Bank and then whatever amount will be ultimately decided by the Bank, will be paid by the petitioner in terms of her own undertaking without prejudice to her rights and contentions to raise the issue with regard thereto for adjudication before an appropriate court of law.

Learned counsel for the petitioner has undertaken that the amount so decided by the Bank will definitely be deposited by the petitioner within the aforesaid three months provided the Bank comes out with a decision before that time.

In the aforesaid view of the matter, the e-auction sale notice dated 17th July, 2019 shall not be held.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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