

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.297 of 2017

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Vidya Bhushan Prasad Son of Sri Shyam Sundar Prasad, R/o village-Shahpur
Opposite Durga Mandir, P.O.-Shahpur, P.S.-Danapur, District-Patna.

... .. Petitioner/s

Versus

1. Zonal Manager, Punjab National Bank, Head Office, Arrah, Ramana Maidan, Arrah, Dist. Bhojpur.
2. Regional Manager, Punjab National Bank.
3. Chief Manager, Punjab National Bank, Kankarbagh, Doctors Colony, Patna-20.
4. Authorized officer, Punjab National Bank, Kankarbagh, Doctors Colony, Patna-20.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rewti Kant Raman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 08-08-2019 Heard learned counsel for the petitioner and learned
counsel for the Bank.

Learned counsel for the petitioner has submitted before this Court that from Annexure-4 to the writ application it will appear that the petitioner had sent his objection to the notice under Section 13(2) of the SARFAESI Act to the Chief Manager of the bank by speed post on 13.05.2015, but then the bank filed an affidavit before the Debts Recovery Tribunal that no such representation has been received by the bank.

Learned counsel for the Bank has submitted that the Debts Recovery Tribunal has considered the entire facts and circumstances and thereafter passed the impugned judgement.



On perusal of a judgement dated 06.11.2015, this Court finds that paragraph 6 of the judgement contains the finding of the Tribunal which reads as under:-

“6. In the case, the bank has issued demand notice u/s 13(2) of the SARFAESI Act on 13.3.2015 and the applicant has represented the demand notice on 13.5.2015 before the Bank, but the bank has given an affidavit with effect that the representation has not been received by the bank, therefore, the question of deciding the representation does not arise. Further, the bank has taken the possession of property on 7.7.2015 by issuing the possession notice and the possession notice has been published in two leading newspapers on 9.7.2015 within the prescribed period of seven days [Photocopy of paper cutting has been filed]. Thereafter, the bank has issued e-auction sale notice on 7.10.2015 fixing the date of e-auction sale on 16.11.2015. However, the applicant has not disputed regarding the possession notice and e-auction sale notice. So far as the dispute regarding agricultural land is concern, as per the bank's reply, the properties are commercial.”

This Court is of the considered opinion that it will be an issue of fact which cannot be adjudicated in a writ jurisdiction.

In the aforesaid view of the matter, this Court sitting in its writ jurisdiction would not be willing to entertain the present writ application. No jurisdictional error has been pointed out to this Court. The petitioner has a statutory remedy of appeal under the provisions of the SARFAESI Act, 2002 and the



petitioner, if so advised, may seek his alternative remedy by filing an appropriate appeal before the appellate tribunal within a period of 30 days from today. In case such an appeal is preferred before the Debts Recovery Appellate Tribunal and in case a question of limitation arises for consideration the same will be considered keeping in view the period spent by the petitioner before this Court and in accordance with law.

(Rajeev Ranjan Prasad, J)

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