IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15133 of 2019

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Raj Kumar Sah, aged about 47 years, Gender – Male, Son of Late Dina Nath Sah Resident of Village Kaithwalia, Ward No.7, P.S.- Gopalganj, District- Gopalganj.

... ... Petitioner

Versus

1. The State Bank of India, Ambedkar Chowk Branch, Trust Market, Gopalganj through its Chief Manager.
2. The Regional Manager, State Bank of India, Siwan.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Naresh Prasad, Advocate
For the Respondent/s	:	Mr.Kaushlendra Kumar Sinha. Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 30-09-2019 Heard learned counsel for the petitioner.

Petitioner is challenging the order dated 09.05.2019 passed by the Authorized Officer, State Bank of India, Regional Office, Siwan whereby the Authorized Officer has taken action under Section 13(4) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002") read with Rule 8(1) and Rule 9 of the SARFAESI Rules, 2002.

Learned counsel for the petitioner submits that the petitioner is willing to pay the outstanding amount of Rs. 4,60,445/- in terms of the possession notice and therefore the court should interfere with the notice under challenge.

This court is of the considered opinion that so far as challenge to the notice under Section 13(4) of the SARFAESI Act, 2002 is concerned, the writ application is not an appropriate remedy for challenging the possession notice. The remedy of the petitioner lies under Section 17(1) of the SARFAESI Act, 2002 before the Debts Recovery Tribunal. In the case of **United Bank of India Vs. Satyawati Tondon** reported in **(2010) 8 SCC 110**, in paragraph '43' of the judgment, the Hon'ble Supreme Court has provided a word of caution saying that in the matter of recovery of Bank's dues the High Court need not exercise it's extraordinary writ jurisdiction unless the petitioner exhausts the statutory remedy provided under the Act of 2002 itself.

This Court, therefore, finds that the petitioner has an adequate alternative remedy of appeal under the scheme of the SARFAESI Act, 2002 and he may apply for the same within a period of 30 days from today. The possession notice seems to have been issued on 19.05.2019, the petitioner had moved this court immediately thereafter on or around 12.07.2019, and thereafter he was pursuing his remedy before this court under some bonafide belief, therefore, if an application under Section 17 of the SARFAESI Act, 2002 is preferred within the aforesaid period and a question of limitation arises for considerations the same will be considered keeping in view the period spent by the petitioner before this court and other reasons as may be explained by him.

Since learned counsel for the petitioner has submitted that the petitioner is ready to deposit Rs. 4,60,445/- with the Bank, he may approach the Authorized Officer of the Bank within one week from today and shall request the Authorized Officer to accept the outstanding amount, if possible by granting installments, in terms of the recovery policy of the Bank. If the petitioner approaches the Authorized Officer for such purpose the Authorized Officer would consider the same keeping in view the recovery policy of the Bank.

This Writ Application is disposed off accordingly.

Rajeev/-

(Rajeev Ranjan Prasad, J)

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