IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2036 of 2017

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1. Authorised Officer, Central Bank Of India, Regional Office, Allapatti, Darbhanga.
2. Central Bank of India, Regional Office, Allalpatti, Darbhanga.

... ... Petitioner/s

Versus

1. The District Magistrate, Darbhanga.
2. M/s Madhavi Hotel Ltd. having its registered office at 302, Krishna Galaxy Datta Mandir Road, Santa Kruz (East), Mumbai and place of business at Hotel Ganga Residency, Rambagh Kila, Darbhanga through its Managing Director, Sri. Bal Krishna Jha.
3. Shri Bal Krishna Jha, Son of Yogendra Jha, Resident of Hotel Ganga Residency, Rambagh Kila, P.S.- L.N.M.U. Campus, District- Darbhanga.
4. Smt. Rani Jha, Wife of Sri Bal Krishna Jha, Resident of Hotel Ganga Residency, Rambagh Kila, P.S.- L.N.M.U. Campus, District- Darbhanga.
5. Shri Kamlesh Jha, Son of Sri Bal Krishna Jha, Resident of Hotel Ganga Residency, Rambagh Kila, P.S.- L.N.M.U. Campus, District- Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Sinha, Adv.
For the Respondent/s	:	Mr. Arbind Kumar, JC.
For the State	:	Mr.A. K. Rastogi- AAG10. Mr. Naman Nayak, AC to AAG 10.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 07-02-2019 Heard learned counsel for the petitioners, the State and the Private Respondents.

2. The Bank is aggrieved by the order dated 23.11.2016 passed by the Collector-cum-District Magistrate, Darbhanga in Appeal Case No. 177/2013 filed by the petitioner-Bank under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act, 2002).

3. It would appear from the order impugned in the

present writ application that when the Bank approached the Collector-cum-District Magistrate, Darbhanga to make available adequate force to assist the Bank in taking over the possession of the secured assets, the Collector-cum-District Magistrate, Darbhanga registered it as Appeal Case No. 177/2013 and then proceeded to pass an order taking note of the pending proceedings arising out of the SARFAESI action of the Bank, before this Court and then on his own he decided to stay further proceeding of Appeal Case No. 177/2013, meaning thereby, that he did not accept to the request of the Bank to provide assistance and stayed further action till disposal of the matters in the High Court.

4. It appears that the order dated 23.11.2016 came to be challenged in CWJC No.16299 of 2017 at the instance of one Ramanuj Kumar Singh who is the auction purchaser of the assets in question. The learned Coordinate Bench of this Court took note of the Judgment of the Hon’ble Division Bench of this Court passed on 11.05.2017 in L.P.A No.1475 of 2014, particularly Paragraphs 9 and 10 thereof and then stayed the operation of the order dated 23.11.2016 passed by the Collector-cum-District Magistrate, Darbhanga.

5. Learned counsel representing the petitioners

submits that the Collector-cum-District Magistrate, Darbhanga is not justified in granting a kind of stay of further action when this Court has not granted any stay of the operation of impugned order in CWJC No.7440 of 2012.

6. Mr. Arbind jha, learned counsel for Private Respondents submits that since CWJC No.7440 of 2012 is pending for hearing, the Collector was justified in passing the impugned order.

7. In the opinion of this Court, though CWJC No.16299 of 2017 has been tagged with CWJC No.7440 of 2012, the net effect of the order of stay passed by the learned Coordinate Bench would be that now the Collector-cum-District Magistrate, Darbhanga would be required to consider the request of the Bank in terms of Sections 14 (1) and 14 (2) of the SARFAESI Act, 2002 and take appropriate measures to assist the Bank in taking possession of the secured assets.

8. This Court has also been informed that the impugned order in CWJC No.7440 of 2012 is not under stay though the writ application is pending consideration. It will be open for the petitioner of the said case, if so advised to seek appropriate interim relief in CWJC No.7440 of 2012 but it cannot be said in the present circumstance that the Collector-

cum-District Magistrate, Darbhanga would on his own will and volition keep on sitting over the matter. He has to perform his statutory duties and do the needful on the requisition made by the Bank in terms of the provision of the Act of 2002.

9. Paragraph Nos. 9 and 10 of the Division Bench Judgment in L.P.A. No.1475 of 2014 are recorded as under:-

> *"9. Adverting to the provisions of Sections 14(1) and 14(2) of the SARFAESI Act, the intent and purpose of the District Magistrate is to assist the Bank in taking possession of secured asset and also take such steps or use such position, as may be necessary. Sections 14(1) and 14(2) of the SARFAESI Act are reproduced hereinbelow:*
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> > *14(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-*
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> > *(a) take possession of such*

asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor;

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(2) For the purpose of securing compliance with the provisions of sub-section(1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

10. Thus, from the plain reading of Section 14(1) and 14(2) of the SARFAESI Act, it is evident that the role of the District Magistrate is to "assist", take or cause to be taken for such steps and use, or cause to be used, such force" as may, in his opinion be necessary. The District Magistrate was not an adjudicatory authority, rather it is only for assistance and if necessary provide police force, but the District Magistrate on his own on the requisition of the appellant Bank had initiated Case No. 44/2013-14 asking both parties to appear and has passed an adjudicatory order. This is not permissible under the SARFAESI Act as the duty of the District Magistrate under the SARFAESI Act is to provide assistance, take steps and provide force, if necessary and not to act as an adjudicatory authority."

10. Since, the order impugned in the present writ application has already been stayed by the learned Coordinate Bench, this writ application is being disposed of with a direction to the Collector-cum-District Magistrate, Darbhanga to proceed with the request of the Bank and perform his statutory duty in

accordance with law. While performing his statutuory duties, he will consider all aspects of the matter as provided in law.

11. Learned counsel for the private respondent shall be at liberty to mention the main writ application.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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