IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16062 of 2019

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1. Dhananjay Kumar Son of late Nand Kishore Kunwar, Resident of Mohalla- Umanagar, Police Station- Chapra Muffasil District- Saran at Chapra.
2. Sanjay Kumar, Son of late Nand Kishore Kunwar, Resident of Mohalla- Umanagar, Police Station- Chapra Muffasil District- Saran at Chapra.

... ... Petitioners

Versus

1. UCO Bank, through its Zonal Manager, Zonal Office- Maurya Lok Complex, 4th Floor, A Block, New Dak Banglow Road, Patna.
2. The Zonal Manager, Zonal Office- Maurya Lok Complex, 4th Floor, A Block, New Dak Banglow Road, Patna.
3. The Authorised Officer, UCO Bank, Zonal Office- Maurya Lok Complex, 4th Floor, A Block, New Dak Banglow Road, Patna.
4. The Branch Manager, UCO Bank, Municipal Chowk, Chapra, Saran.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr.Satya Prakash, Advocate
For the Bank : Mr.Vishwajeet Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 18-10-2019 If the petitioners are aggrieved by the action taking possession of the mortgaged property in terms of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002'). It is open for the petitioners to seek their remedy under Section 17 of the SARFAESI Act, 2002. The remedy applied for by filing the present writ application is not just and proper inasmuch as on the face there being a special statute and a forum created thereunder being available to the petitioners, this Court would not be willing to

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exercise its extraordinary writ jurisdiction in the present case.

No case for entertaining the writ application within the given parameters would be made out by the petitioners. In this connection this Court would also record the Paragraph '43' of the judgment in the case of **United Bank of India Vs. Satyawati Tondon & Ors.** reported in **(2010) 8 SCC 110** which reads as under :-

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

The writ application is, thus, disposed off without interfering with the impugned action in the writ application leaving it open for the petitioners to pursue their remedy before the appropriate forum in appropriate jurisdiction in

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accordance with law. If such a remedy is applied for in the concerned forum and a question of limitation arises for consideration, the same will be considered keeping in view the period spent by the petitioners before this Court.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

vats/ved

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