IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17617 of 2019

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Bihari Sah son of Late Shivnandan Sah, Resident of Village- Karnamepur, Police Station- Shahpur, District- Bhojpur.

... ... Petitioner

Versus

1. South Bihar Gramin Bank, Hanuman Nagar, Kankarbagh, Patna- 20, through its Managing Director.
2. Regional Manager, Regional Office, South Bihar Gramin Bank, Sri Harkhen Kumar Jain Trust Bhavan, Hari Ji ka Hata, Ara.
3. Authorized Officer, Regional Office, South Bihar Gramin Bank, Sri Harkhen Kumar Jain Trust Bhawan, Hari ji ka Hata, Ara.
4. Branch Manager, South Bihar Gramin Bank, Karnamepur, Bhojpur (Ara).

... ... Respondents

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Appearance :

For the Petitioner/s : Mr.Suraj Narain Yadav, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 15-10-2019 Heard learned counsel for the petitioner. No one appears on behalf of the Bank.

Petitioner in the present case is seeking quashing of the possession notice dated 03.08.2019 issued under Section 13(4)(a) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002'). During pendency of the writ application petitioner has also filed one I.A. No. 1 of 2019 challenging the auction sale notice of the secured assets which was scheduled to be held on 14.10.2019.

Learned counsel for the petitioner submits that the auction scheduled for yesterday could not be finalised because there was no participant in the auction sale to his information.

Be that as it may, since the petitioner has got an adequate alternative remedy under Section 17 of the SARFAESI Act, 2002 against the action taking possession of the secured assets of the Bank, this Court would not be inclined to entertain the present writ application. In the case of **United Bank of India Vs. Satyawati Tondon & Ors.** reported in **(2010) 8 SCC 110** the Hon'ble Supreme court has observed in Paragraph '43' 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."

At this stage, learned counsel for the petitioner submits that he may be permitted to withdraw this writ application with liberty to seek statutory remedy under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal. Learned counsel, however, also submits that petitioner had earlier entered into a settlement with the Bank and is still ready to pay the amount in terms of the recovery policy of the Bank for which he may be granted liberty to approach the authorized officer of the Bank.

In the given facts and circumstances of the case while permitting the petitioner to withdraw this writ application and seek his remedy before the Debts Recovery Tribunal in accordance with law, this Court grants liberty to the petitioner to approach the authorized officer of the Bank for an amicable settlement of the outstanding dues in terms of the recovery policy of the Bank. If the petitioner approaches the authorized officer of the Bank, the request of the petitioner shall be considered by the competent authority of the Bank in accordance with the recovery policy, if permissible the petitioner would be allowed to enter into a settlement. Since this is a matter of recovery of public money there is no bar in considering the request of the petitioner even during pendency of an application pending before the Debts Recovery Tribunal.

If the petitioner approaches the Debts Recovery

Tribunal within a period of 30 days from today against the impugned action, his application will be considered keeping in view that the petitioner was pursuing his remedy under some bonafide belief before this Court and the question of limitation shall be considered taking into consideration the aforesaid fact of the pendency of the writ application.

The writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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