

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23271 of 2018

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1. Manoj Kumar Yadav S/o Shyam Narayan Yadav, resident of Azad Colony (Teja Tola), P.S Mirchai Bari, District Katihar.
 2. Raj Kumar S/o late Sitaram Sah, resident of Teja Tola (West), P.S Mirchai Bari, dist Katihar.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Govt of Bihar, Patna
2. The Chief Executive Officer, UCO Bank, Head Office Mumbai.
3. The Chief Managing Director, UCO Bank, Head Office, Mumbai
4. The Manager, UCO Bank, Katihar Branch, District Katihar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Arun Kumar No. 1, Advocate
For the Respondent/s	:	Mr.Ranjan Kumar Singh
For the UCO Bank	:	Mr. Ranjeet Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-01-2019 The defects are ignored.

This writ application has been preferred challenging various orders passed by Recovery Officer, Debts Recovery Tribunal, Patna in R.P. Case No. 460 of 2016 arising out of Certificate No. OA 135/2016.

It appears on perusal of the records that one proceeding under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act of 2002') was initiated against the petitioner for recovery of Rs. 12,15,086/- + interest and charges. The said SARFAESI action was challenged by the petitioner in S.A. 87 of 2016 which was allowed by judgment dated 26.05.2016 (Annexure-2). It further appears that the bank also filed one



original application under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act 1993') on 08.03.2016 against the petitioner and other defendants for adjudication and recovery of debts amounting to Rs. 13,41,320/- as on 31.01.2016 along with pendente lite and future interest @ 9.95% from 01.02.2016 with costs. The said original application was registered as O.A. No. 135 of 2016 and was ultimately allowed vide order dated 24.09.2016. A certificate in terms of Section 19(2) of the Act 1993 was issued. It is this certificate which has been sent to Recovery Officer for execution and the recovery proceeding has been registered as R.P. No. 460 of 2016.

Learned counsel for the bank has informed this Court that judgment dated 24.09.2016 passed in O.A. No. 135 of 2016 has attained finality as no appeal therefrom has been filed by the petitioner. In the recovery proceeding the Recovery Officer has passed orders and has taken action towards liquidation of the certificate amount. The immovable property has been attached and those have been ordered to be auction sold for which a date was fixed on 25th of October, 2018 and auction sale notice has been issued. It is these orders which are sought to be challenged in the present writ application.



Learned counsel for the petitioner as well as Bank agree that the order passed by the Recovery Officer is an appellable order and in terms of Section 30 of the Act, 1993. Petitioner could have availed his remedy.

It is well settled that remedy under Article 226 of the Constitution of India is not a substitute of the statutory remedy available under the special statute.

In view of the statutory remedy available to the petitioner this writ application is not fit to be entertained and it is dismissed accordingly.

This, however, not come in the way of the petitioner in seeking statutory remedy of appeal.

(Rajeev Ranjan Prasad, J)

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