IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18514 of 2019

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M/S Sri Ram Janki Agro Processing Pvt. Ltd. Jinoriya, Police Station- Daud Nagar, District- Aurangabad through its Director Brija Narayan Singh aged about 46 years (male) son of Sri Ram Pravesh Singh, resident of village- Jinoriya, Police Station- Daud Nagar, District- Aurangabad.

... ... Petitioner

Versus

1. Allahabad Bank Through its Zonal Manager, Zonal Office, Patna.
2. The Deputy General Manager, Allahabad Bank, Zonal Office, Patna.
3. Chief Manager Allahabad Bank, Zonal Office, Patna.
4. Authorized Officer Allahabad Bank ARMB, Budh Marg, Patna.
5. Branch Manager Allahabad Bank, Chanda Branch, Aurangabad.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Prasad Singh, Advocate
For the Bank	:	Mr. Shiv Mohan Saha, Advocate
For the Respondent/s	:	Mr.Binod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 08-11-2019 Heard learned counsel for the petitioner as well as learned counsel for the Allahabad Bank.

Petitioner, in the present case, is aggrieved by and dissatisfied with the issuance of fresh possession notice dated 17.08.2019, as contained in Annexure ‘4’ to the writ application. By this notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the ‘SARFAESI Act, 2002’), the symbolic possession of the secured asset has been taken over by the Bank.

Learned counsel for the petitioner submits that earlier symbolic possession notice dated 17.12.2018 was quashed by the learned Debts Recovery Tribunal, Patna in S.A. No. 02 of 2019 on the ground that the said possession notice was sent to the borrower only on 21.12.2018 i.e. much after taking over of the symbolic possession of the property, therefore, the action of the Authorized Officer of the Bank was not confirming to the mandatory provision of the Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Learned counsel submits that he is fully aware of the fact that against fresh possession notice, he will have again a remedy available in terms of Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal but he has moved this court only to contend that the action taking symbolic possession of the secured asset has been initiated in haste by the Authorized Officer of the Bank even though the petitioner is ready and willing to settle the account, and, in this regard, he has submitted his request to the Bank with a sum of Rs. 35 Lakhs in the two accounts.

He has drawn the attention of the court towards Annexure '3' and '3/1' to the writ application to contend that while submitting his request to the Branch Manager of the Bank, the petitioner had in fact enhanced the compromise proposal. According to him, in these circumstances the Authorized Officer of the Bank should not have acted in haste as the petitioner has yet to hear the final decision of the competent authority of the Bank in the matter of compromise proposal.

Learned counsel for the Bank submit that so far as the present writ application is concerned, the petitioner has been challenging the symbolic possession taken vide Annexure '4' to the writ application in the present case. Since the petitioner has got an adequate alternative remedy before the Debts Recovery Tribunal, keeping in view the consistent approach of this court the petitioner may be relegated to the appropriate forum i.e. Debts Recovery Tribunal against the impugned action contained in Annexure '4' to the writ application.

So far as the contention of learned counsel for the petitioner that the petitioner has submitted an enhanced proposal with a sum of Rs. 35 Lakhs in the two accounts are concerned, it is always open for the petitioner to pursue with the Bank's authorities towards settlement of the account.

Having heard learned counsel for the petitioner as well as learned counsel for the Bank, this court is of the considered opinion that so far as Annexure '4' is concerned, the petitioner may seek it's remedy before the Debts Recovery Tribunal, Patna under the SARFAESI Act, 2002 which is a complete code unto itself. This court leaves it open for the petitioner as well as respondents to take all such pleas which may be available to them before the Tribunal in the appropriate proceeding.

So far as submission of learned counsel for the petitioner that the petitioner is ready and willing to enter into a settlement with the Bank is concerned, from Annexure '3' and '3/1' learned counsel for the petitioner has shown that the petitioner has submitted his application with a cheque of Rs. 23 Lakhs and Rs. 12 Lakhs respectively in the two accounts. In the opinion of this court, if these two enhanced compromise proposals are still pending with the authorities of the Bank, in case they find that those proposals are fit to be considered in terms of their recovery policy, it will be open for them to consider the enhanced proposal of the petitioner and pendency of any proceeding under the SARFAESI Act, 2002 shall be no bar for the authorities of the Bank in considering the request of the petitioner for settlement of the account, because in ultimate analysis the Bank being custodian of pubic money would have always an interest in recovery of it’s dues and settlement of account which will be in larger public interest.

This Writ Application, thus, stands disposed off with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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