

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24214 of 2018

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Saroj Bala Singhm, wife of Late Ajit Singh, Resident of L-40, Road No.20,
Sri. Krishna Nagar, P.S.-Buddha Colony, District-Patna.

... .. Petitioner/s

Versus

1.The U C O Banak Through Its Branch Manager, Frazer Raod, LIC Building,
Patna.

2.Manish Singh, Son of late Ajit Kumar Singh, Resident of L-40, Road No.
20,Sir Krishna Nagar, P.S.-Buddha Colony, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vikas Kumar

For the Respondent/s : Mr.Ranjeet Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 09-01-2019 Heard learned counsel for the petitioner and learned
counsel representing the Bank.

The prayer in this writ application is to restrain the
respondent-authorities from confirming the sale of the
petitioner's property which has been auction sold through E-
Auction notice dated 29.11.2018 pursuant to the order dated
24.09.2018 passed by the Recovery Officer, Debts Recovery
Tribunal, Patna in R.P. Case No. 15 of 2014.

Learned counsel for the petitioner submits that no
doubt the petitioner is one of the certificate debtors in terms of
the judgment dated 23.12.2013 passed by the Debts Recovery
Tribunal in O.A No. 192 of 2011 but she has preferred one



Miscellaneous Application for review of the said Judgment and the resultant certificate.

Learned counsel submits that earlier the Miscellaneous Application was dismissed in default as the learned counsel representing the petitioner could not appear on the date fixed in the matter. When the prayer for restoration was rejected by the Presiding Officer of the Debts Recovery Tribunal the petitioner moved this Court in CWJC No. 19404 of 2007 which was allowed vide judgment dated 26.11.2018. As a result of this, now the M.A. No.75 of 2016 has been restored to its original file and is required to be heard on its own merit.

It is submitted that the property in question has been auction sold in favour of the successful bidder and the Recovery Officer is likely to confirm the sale in terms of the provisions of the Recovery of Debts due to Banks and Financial Institution Act, 1993 read with Rules framed thereunder. It is submitted that for the present and till pendency of the Miscellaneous Application before the Presiding Officer, Debts Recovery Tribunal, the Recovery Officer be restrained from taking any action towards confirmation of the sale.

On the other hand, learned counsel representing the Bank submits that it would appear from the judgment dated



23.12.2013 that this petitioner being one of the defendants had appeared in the original application but despite several opportunities given to her she failed to file her written statement. It is only thereafter that the Tribunal closed the evidence of the defence and the judgment was pronounced on 28.08.2012 but the said judgment was set-aside by the learned Court vide order dated 08.03.2013. In compliance of the order of the learned writ Court, notice was issued to all the defendants to appear before the Tribunal but none of the defendants appeared. It is in these circumstances, the proceeding was ordered to proceed ex-parte. The Judgment dated 23.12.2013 was thereafter passed in accordance with law. Under these circumstances, when the certificate proceeding was initiated by the Recovery Officer, the steps were taken for recovery of the certificate amount and in the process thereof auction sale notice dated 29.11.2018 was issued. Prior to that the Recovery Officer had passed order dated 24.09.2018 for issuance of sale notice.

Learned counsel submits that the petitioner neither challenged the order dated 24.09.2018 passed by the Recovery Officer nor any challenge was made to the auction sale notice issued under the order of the Recovery Officer. It is only when the auction was successfully held and the successful bidder



deposited a sum of Rupees One Crore and Sixty Two Lakhs, the son of the present petitioner who was defendant no. 1 filed an application before the Recovery Officer for setting-aside of the auction sale. He has also deposited a Demand Draft of Rupees Eighty Five Lakhs Thirty Thousand.

On filing the said application by the son of the petitioner the Recovery Officer has given direction to the Bank to file its reply and the matter has been fixed for today. Information has also been given to the successful bidder.

Learned counsel submits that the Miscellaneous Application filed by the petitioner is a mere pretext to delay the proceeding on one ground or the another. He has relied upon the Judgment of this Court dated 11.07.2015 passed in LPA No. 610 of 2014 wherein the Hon'ble Division Bench has taken a view that the Debts Recovery Tribunal shall not entertain the Miscellaneous Application for reviewing its decision on merit of an order passed by it. Such Miscellaneous Application may be entertained only if it confirms the condition mentioned in Rule 5 A and when an error apparent on the face of the record is found.

It is, thus, submitted that the restoration of Miscellaneous Appeal alone would not be of any significance



inasmuch as, the fact remains that the certificate issued by the Presiding Officer, Debts Recovery Tribunal in terms of 'Annexure 3' to the writ application has become final and binding on the parties. No statutory appeal has been preferred by the present petitioner for setting aside the judgment dated 23.12.2013.

Having heard learned counsel for the parties and on perusal of the records, I find force in the submissions of the learned counsel representing the Bank. The petitioner neither challenged the order dated 24.09.2018 passed by the Recovery Officer nor took any step to challenge the auction sale notice dated 29.11.2018. At this stage, when the sale has been held and the successful bidder has already deposited the entire amount this Court cannot restrain the respondent-authorities from confirming the sale of the property. This would however not to be construed as any opinion on the application filed by the son of the petitioner before the Recovery Officer who is in seisin of the matter. No part of the observations of this Court while rejecting this writ petition will affect the independent consideration of the application filed by the son of the petitioner.

So far as this writ petition is concerned, petitioner has



failed to make out a case for interference.
The application is dismissed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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