IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10840 of 2013

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Raj Kishore Sinha S/O Late Saryu Sharan Sinha R/O D/115, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, Patna-800020

... ... Petitioner/s

Versus

1. Punjab National Bank Through Its Chairman Cum Managing Director 7, Bhikhajee Cama Place, H/O New Delhi - 110066
2. Chairman Cum Managing Director Punjab National Bank, 7, Bhikhajee Cama Place, H.O New Delhi- 110066
3. The General Manager Bihar & Jharkhand, P.N.B., Circle Office, Chanakya Place, R. Block, Patna-800001
4. The Circle Head, Circle Office PNB, Chanakaya Place, R. Block, Patna-800001
5. The Circle Head, Gaya Circle Office PNB, 400, A.P. Colony, Gaya
6. The Chief Manager PNB, B/O New Market, Patna-800001
7. The Senior Manager PNB, B/O R.K. Avenue, Patna-800003

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Bhartee
For the Respondent/s	:	Mr.Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

18 07-01-2019 Heard learned counsel for the petitioner and learned counsel representing the Punjab National Bank.

The communication dated 06.05.2013 which is under challenge has been issued under the signature of the Authorized Officer of the Bank addressed to this petitioner calling upon him to deliver the possession of the secured assets detailed therein failing which the petitioner was threatened that the possession of the secured assets shall be taken over by the Authorized Officer with the help of the police authorities.

Learned counsel for the petitioner submits that from

Annexure 1 to the writ application it would appear that a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI ACT, 2008") in connection with a housing loan was served upon the wife of the petitioner who was the guarantor of the loan. This petitioner happened to be the borrower as he was himself serving in the Bank at the relevant time. It is submitted that while serving in the Bank, the petitioner had availed certain other loans of personal nature for which no security interest was created and the land and building with respect to whom the SARFAESI action was initiated was only offered as a security interest for the purpose of the housing loan.

It is submitted that when the demand notice (Annexure 1) was served, the petitioner paid a sum of Rs.2,50,000/- to make good the housing loan default. In support of this, attention of this Court has been drawn towards the statement recorded in Annexure '8' which is the letter dated 06.05.2013 impugned in the present writ application. The letter admits in second paragraph that the amount due to the Bank in the housing loan account as on 31.03.2013 was Rs.2,49,751/- which is being recorded interest with further interest w.e.f.

31.03.2013 until payment in full. It is also admitted that a sum of Rs.2,50,000/- was deposited by the petitioner against this on 16.04.2013. Learned counsel, therefore, submits that once the housing loan account was made good, the Authorized Officer could not have issued the letter dated 06.05.2013 calling upon the petitioner to deliver the possession of the secured assets and by no mean the other loan accounts could have been made a ground for calling upon the petitioner to deliver the possession of the secured assets. Learned counsel submits that so far as other loan accounts were concerned, it would be evident from the records that the land and building were not offered as security interest for those accounts.

In course of argument, learned counsel has submitted that the petitioner was dismissed from service by the Bank and thereafter he had become entitled to get at least a sum of Rs.8,52,817/- in the year, 2002 itself but his terminal benefits were not paid for a long time. The loan account which had become NPA in June, 2003 was not categorized as NPA Account till some time in 2011 and because of this inaction on the part of the Bank on the one hand the petitioner was deprived of getting his terminal benefits in due time and at the same time the loan account went on burdening with interest at the contractual/sanctioned/Penal rate.

Learned counsel further submits that at the relevant time in the year, 2002 the loan account had a total outstanding of not more than Rs.5,00,000/- and if the petitioner would have been allowed the terminal benefits amount towards the outstanding loan, the entire loan amount could have been wiped out and the certain surpluses would have been available to the petitioner. It is submitted that in this case the petitioner has suffered monetary loss because of the inaction on the part of the Bank. Learned counsel further submits that from the sanctioned letter issued by the Bank at the time of granting loan it would appear that the outstanding loan was to be adjusted firstly from the gratuity and provident fund account of the petitioner.

On the other hand, Mr. Kumar Priya Ranjan, learned counsel representing the Bank submits that the SARFAESI action was initiated against the wife of the petitioner who was the guarantor of the loan. Wife of the petitioner has not joined this writ application and, therefore, the writ application is fit to be dismissed on the ground of non-joinder of necessary party. Learned counsel further submits that during pendency of the writ application, the things have settled down to a great extent inasmuch as, now the terminal benefits of the petitioner have been settled and after adjustment of the same against the outstanding loan amounts the loan account have been closed and on adjustment nothing is payable to the petitioner. From the point of view of the Bank, Mr. Kumar Priya Ranjan, learned counsel submits that now all the loan accounts have been settled and paid but learned counsel representing the petitioner submits that petitioner would be entitled to claim at least Rs.3,50,000/- and interest thereon up to date which the petitioner has suffered due to inaction on the part of the Bank. Learned counsel for the Bank, however, submits that the petitioner had never claimed terminal benefits amount and there was no delay on the part of the Bank in taking action towards the settlement of the same.

Having heard learned counsel for the petitioner and learned counsel representing the Bank, this Court is of the considered opinion that Annexure 8 dated 06.05.2013 issued by the Authorized Officer is contrary to the scheme of the SARFAESI Act, 2002. It is not in dispute that the land and building were offered as secured assets against the housing loan account alone. Once the outstanding loan in the housing loan account is paid by the petitioner on 16.04.2013, there was no reason for the Authorized Officer to continue with the SARFAESI action against the secured asset for realization of the outstanding loan in the personal loan accounts. The SARFAESI action may be initiated only when the Bank has got a security interest and there is a secured asset against which the action can be taken. In the present case the land and building was not offered as security interest and it was not a secured asset offered to the Bank for realization of the loan lying in pesonal accounts save and except the housing loan.

Thus, the Authorized Officer apparently exceeded his jurisdiction in calling upon the petitioner to pay all the entire outstanding amount failing which he threatened the petitioner of a forceable taking over of possession of the land and building as if the same was secured asset against those personal loan accounts. To that extent, the action of the Authorized Officer was not justified. Hence, the letter dated 06.05.2013 (Annexure 8) insofar as it calls upon the petitioner to deliver the possession of the land and building detailed in the said letter is liable to be set-aside and is set-aside, accordingly. The fact that the wife of the petitioner has not joined him in the writ application would not make the writ application incompetent because this Court finds that Annexure ‘8’ which is impugned in the writ application is addressed to the present petitioner.

As regards the claim of the petitioner that due to inaction on the part of the Bank he has been made to suffer and was required to pay more than what could have been the actual amount payable in the year, 2002, this Court finds that the said issue cannot be gone into in the present writ application for two reasons. Firstly, that the relief prayed in the writ application nowhere indicates any such relief prayed by the petitioner and secondly, even if such relief would have been there, the nature of controversy in which the damages or compensation are being claimed and would be required to be awarded to the petitioner, it would require taking of evidences on behalf of both the parties and such evidences may be adduced only before a Civil Court of competent jurisdiction. This aspect is thus left open for the petitioner to agitate in an appropriate jurisdiction before an appropriate Court/Forum. In case the petitioner seeks his remedy before any court/forum and a question of limitation arises, the court /forum, as the case may be, shall consider that as advised the petitioner was pursuing this case before this Court.

This writ application stands disposed of with the directions indicated above.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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