

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.272 of 2019

In
Civil Writ Jurisdiction Case No.18790 of 2015

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M/s Ashoka Auto Enterprises (P) Ltd., Exhibition Road, Patna through its Director Mrs. Neelam Sahu registered office at Exhibition Road, P.S.-Gandhi Maidan, District-Patna, Resident of 197-B, North Sri Krishna Puri, P.S.-S.K. Puri, Patna-800001

... .. Petitioner

Versus

1. The Union of India through its Secretary, Ministry of Finance (Banking Division), New Delhi.
2. The Presiding Officer, Debt Recovery Tribunal, 34 Bank Road, Opposite New Police Line, Lodhipur, Patna now at 2nd Floor AB and F Wing Karpuri Thakur Sadan, Kendriya Karamchari Parisar (GPOA), Ashiana Digha Road, Patna-800025.
3. Canara Bank, Branch Exhibition Road, through its Branch Manager.
4. The Authorized Officer, Canara Bank, Exhibition Road Branch, District-Patna.
5. Daya Shanker Tiwary, son of Late Baidya Nath Tiwary, R/o Mohalla-Sheikhpura, P.S.-Shastri Nagar, District-Patna.
6. Sanjay Kumar, son of Laxman Rai, Resident of Village and P.O.-Imadpur, P.S.-Sarai, District-Vaishali (Hajipur).
7. Smt. Suman Prava, wife of Shri Madhup Kumar Singh, R/o B-4-103, PRDA, S.K. Puri, Patna-1 (Bihar).

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Sinha, Advocate
For the Canara Bank	:	Mr. Rajan Ghoshware, Advocate
For the Auction Purchaser:	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 06-11-2019 This Review Application has been preferred for

review of the order dated 05.08.2019 passed in CWJC No.

18790/2015.

By the order dated 05.08.2019, passed in the writ



application, this court has declined to entertain the writ application by taking a view that it would not be appropriate for this court to enter into an issue of accounting and calculation of the outstanding dues and in case the petitioner is aggrieved by the order passed by the Debts Recovery Tribunal, as contained in Annexure '7' to the writ application, he has a remedy of statutory appeal available before the Appellate Tribunal and liberty has been granted to the petitioner to seek it's remedy before the Appellate Authority in accordance with law.

Learned counsel for the Review Petitioner submits that in fact the petitioner had gone before the Tribunal challenging the possession notice as well as E-Auction notice dated 15.10.2015 and had raised issue with regard to the valuation of the property. The Debts Recovery Tribunal dismissed his application on 20.11.2015, thereafter on 21.11.2015, E-Auction sale took place in which the private respondents were the successful bidders and in their favour subsequently sale certificates have been issued which are yet to be confirmed.

Learned counsel submits that the subsequent sale



in favour of the private respondents were challenged in this writ application by filing Interlocutory Application. He submits that while granting liberty to the petitioner to go in statutory appeal against the impugned order if this court has not granted liberty to the petitioner to seek it's remedy against the post E-Auction sale cause of action which the petitioner claims, perhaps he may not be able to seek his remedy against the post E-Auction sale cause of action. According to him one of the grievances of the petitioner is that the private respondents who were the auction purchasers had not deposited the sale amount in terms of the Rule 9(3) and 9(4) of the Security Interest (Enforcement) Rules, 2002.

It is submitted that this would be an independent cause of action and the petitioner being aggrieved has a remedy against that under Section 17 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act 2002").

Learned counsel for the Bank as well as the private respondents are present and they submit that the



apprehension of the petitioner is totally misplaced inasmuch as once this court has declined to entertain the writ application and has granted liberty to the petitioner to challenge the impugned order of the Debts Recovery Tribunal before the Appellate Authority, the petitioner could have very well challenged the order of the Tribunal before the Appellate Authority and further in case the petitioner is of the view that there is any fresh cause of action to the petitioner post auction sale for which he has a remedy under Section 17 of the SARFAESI Act 2002, he could have applied for that remedy and this court is not required to give any observation with regard to the opinion of the petitioner as to a remedy available to him against the post E-Auction sale cause of action. It is to be left to the wisdom of the petitioner to seek whatever remedy they have according to them in law.

Having heard learned counsel for the parties and on perusal of the records, this court finds no error apparent on the face of the record in the order dated 05.08.2019 passed in CWJC No. 18790/2015. This court has not entertained the writ application and has already



granted liberty to the petitioner to avail his remedy against the order passed by the Debts Recovery Tribunal. This Court has not given any observation either way with regard to the right of the petitioner to avail any other remedy that would be available to him under the law, therefore, the petitioner should not have any misapprehension in it's mind as what is permitted to him in law has not been taken away by this court.

In such circumstance, this Review Application is disposed off with the aforesaid observations.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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