IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18737 of 2017

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Shravan Kumar S/o Meghu Sao, Director of Shiv Sagar Rice Mill PVT LTD., Maniyawan Road, Deepnagar, Nalanda.

... ... Petitioner

Versus

1. The District Magistrate, Biharsharif, Nalanda, Dist-Nalanda.
2. The Sub Divisional Magistrate, Biharsharif, at Nalanda Dist- Nalanda.
3. The Chief Manager cum the Authorized Officer, Punjab National Bank, Branch Office- Biharsharif, District – Nalanda.
4. The Executive Magistrate, Biharsharif, Dist- Nalanda.
5. Chairman cum the Managing Director, Punjab National Bank, HO-5, Sansad Marg, New Delhi- 110001.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Chitranjan Sinha, Sr. Advocate
		Mr.Abhya Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Sushil Kumar Singh, AC to AAG-10
For the Respondent Bank :		Kr.Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

8 12-03-2019 This writ application has been preferred seeking quashing of the possession notice issued by the Authorised Officer of the Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act, 2002'). It appears that during pendency of the writ application e-auction notice dated 31.01.2019 and 08.02.2019 have been received by the petitioner, therefore, the petitioner has again moved this Court by filing an interlocutory application being I.A. No. 3 of 2019 to stay the proceeding of

the auction sale. Another interlocutory application being I.A. No. 4 of 2019 has been filed seeking a quashing of the letter dated 28.02.2019 issued by the Bank in favour of Sri Roy Rajkamal Sinha who is said to be the auction purchaser. In the interlocutory application he has been described as respondent no. 6 but fact remains that till date neither any application for his impleadment has been filed nor there is any order of this Court otherwise to implead him as respondent no. 6. Apparently, the description of the auction purchaser as respondent no. 6 mentioned in the interlocutory application is not correct.

Mr. Chitranjan Sinha, learned Senior Counsel representing the petitioner submits that although some issues of law have been raised by the petitioner in the present writ application, considering the scope and ambit of writ jurisdiction under Article 226 of the Constitution of India, at this stage, without going into all such issues before this Court the petitioner would only like to inform that the Bank has been acting in haste in the matter of holding of the e-auction and then going further towards issuance of sale letter in favour of the auction purchaser, even though the petitioner is ready and willing to deposit a sum of Rs. 1.65 crores as against the auction value of only rupees one crore.

The Bank who is the custodian of public money is ready to part with the property in question ignoring the substantial offer of Rs. 1.65 crores which is being made by the petitioner.

Mr. Sinha, learned Senior Counsel has also submitted that in terms of Rule 8(5) and Rule 8(6) read with Rule 9(6) of the Security Interest Rule, 2002 (hereinafter referred to as 'the Rules of 2002'), neither the petitioner was informed about the mode and manner in which the valuation of the property has been done nor a clear 30 days notice before holding e-auction has been given to the petitioner. It is submitted that these are the mandatory provisions under the Rules of 2002 which have not been followed by the respondent-Bank in the matter of e-auction sale.

On the other hand, Mr. Kumar Priya Ranjan, learned counsel for the Bank submits that the petitioner has an equally efficacious alternative statutory remedy by way of filing of a securitisation application under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal. Instead of availing the statutory remedy, the petitioner has moved this Court in its writ jurisdiction. It is submitted that in terms of the judgment of the Hon'ble Apex Court in case of **Union Bank of**

India Vs. Satyawati Tandon reported in **2010 (8) SCC 110** this Court sitting in its writ jurisdiction need not entertain a challenge to the proceeding initiated by the authorised officer under special statute.

It is submitted that so far as the e-auction sale notice is concerned, the petitioner has moved this Court for stay of the same but the fact remains that the e-auction sale notice was not even under challenge in the present application as no amendment petition was filed before this Court challenging the e-auction sale notice at any stage. Further the prayer in I.A. No. 3 of 2019 is for stay of the auction sale notice but the auction sale has already taken place and the successful auction purchaser has deposited 25% of the sale amount in the Bank. Rest of 75% of the auction sale amount is likely to be deposited by 15.03.2019.

In such circumstances, it is submitted that I.A. No. 3 of 2019 has become infructuous. It is further submitted that as regards I.A. No. 4 of 2019, the petitioner has again remedy available before the Debts Recovery Tribunal and therefore, this Court need not entertain the present writ application as well as the interlocutory application.

Having heard learned Senior Counsel for the petitioner and learned counsel for the Bank, this Court finds that initially the writ application was filed for quashing of the possession notice. The Court agrees with the submission of learned counsel for the Bank that in view of the judgment of the Hon'ble Supreme Court in the case of **Satyawati Tandon** (supra) the writ application need not be entertained as the petitioner has his remedy available under Section 17 of the SARFAESI Act, 2002 which is in the nature of a special statute.

This Court also finds that during pendency of the writ application e-auction sale has already taken place. The petitioner had again a cause of action to challenge the e-auction sale notice which is one of the measures provided under Section 13(4) of the SARFAESI Act, 2002 and against which application under Section 17 of the SARFAESI Act, 2002 could be maintainable. The petitioner has not done so.

Mr. Sinha, learned Senior Counsel for the petitioner has, at this stage, submitted that the petitioner may be given liberty to file an appropriate application under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal, Patna. It is submitted that considering the fact that the petitioner is ready and willing to deposit a sum of Rs. 1.65 crores which is over 65 lacs to the amount being offered by the auction purchaser, keeping in view the larger public interest an interim protection may be granted to the petitioner for a period of 21 days within which he may seek his remedy before the Debts Recovery Tribunal at Patna.

This Court is willing to accept the submission of Mr. Sinha learned Senior Counsel as the Court is of the view that it should be the intention of a secured creditor to fetch maximum amount from the property which is a secured asset in his hand. The petitioner is, thus, granted liberty to move before the Debts Recovery Tribunal, Patna within a period of 21 days as prayed for. So far as interim protection is concerned, the petitioner should deposit at least a sum of Rs. 50 lacs within 21 days from today with the Bank to show his bonafide. Such deposit will neither confer any right in favour of the petitioner nor it will prejudice the rights and contentions of the Bank and the auction purchaser. If such deposits are made, the petitioner may show his bonafide before the Debts Recovery Tribunal at the time of hearing of the application, which may be preferred by him during the aforesaid period of 21 days.

Subject to the aforesaid, the Bank would be free to accept the rest of the amount from the auction purchaser, however, the sale would not be confirmed for a period of 21 days from today. Further course of action will depend upon the orders which may be passed by the Debts Recovery Tribunal.

If any question of limitation will arise before the Debts Recovery Tribunal, the same shall be considered keeping in mind that the petitioner was pursuing his remedy before this Court.

This writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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