

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21082 of 2019

1. Zakir Hussain Son of late Wazir Hussain Khan, Resident of 68, South Gandhi Nagar, Boring Canal Road, Police Station- Srikrishnapuri, Town and District- Patna-800001
2. M/S IRIS Electronics India Pvt. Ltd. a company Incorporated under the Provisions of the Companies Act, Plot No. CH- 29, Srikrishna Nagar, Kidwaipuri, Patna, Bihar.

... .. Petitioner/s

Versus

1. The Reserve Bank of India through its Regional Director, South Gandhi Maidan, Police Station- Gandhi Maidan, Patna.
2. The AXIS Bank Limited, having its Registered Office at TRISHUL, 3rd Floor, Opposite, Samardheshwar Temple, Ellis Bridge, Near Law Garden, Ellis Bridge, Ahmedabad-380006, through its Chairman-cum-Managing Director.
3. The SME Centre Head, AXIS Bank Ltd. UPA Building , Arya Kumar Road, Rajendra Nagar, Patna.
4. The Authorised Officer, Axis Bank Ltd. Stressed Assets (East), 1, Shakespeare Sarani, 3rd Floor, A.C. Market Building, Kolkata.
5. The Branch Manager Incharge, Axis Bank Limited, SME, Branch, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajesh Mohan, Adv.
For the Respondent/s	:	Mr.Sandip Kumar, Adv.
		Mr. Dayanand Singh, Adv.
		Mr. Nagadeo Choubey, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 18-10-2019 In the present case the petitioners are seeking a writ in the nature of a writ of certiorari to quash the notice of sale dated 23.09.2019 issued by the respondent Axis Bank Ltd. A prayer has also been made to direct the respondent bank to accept and approve the offer of the petitioners to liquidate their dues outstanding as on the date the account was declared Non-



performing Asset (NPA).

It appears that earlier when the action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002') was taken against the petitioners, they moved this Court in CWJC No.8511 of 2017 which was disposed of by a learned coordinate Bench of this Court on 31.01.2018. The learned coordinate Bench was of the view that since the petitioners have got a statutory remedy available by way of appeal under Section 17 of the SARFAESI Act, 2002 which has not been availed of by them, the Court would not be inclined to enter upon the merits of the matter. While disposing of the writ petition, learned coordinate Bench observed in paragraph '6' of its order as under:-

"6. The writ petition stands disposed of with liberty to the petitioners to approach the appellate forum for redressal of their grievances. In case any such appeal is filed within a period of 30 days from today the same shall be considered and disposed of on its own merits in accordance with law. In such event any auction of the mortgaged property of the petitioner as may be held hereafter shall abide by the final result of the appeal."

Learned counsel for the petitioners submits that pursuant to the aforesaid observations of this Court, the



petitioners have preferred SARFAESI application being SARFAESI Application No.205 of 2018 which is pending consideration before the Debts Recovery Tribunal at Patna. Learned counsel submits that during the pendency of the SARFAESI application now the bank has notified the e-auction sale of the secured asset, therefore the same should be stayed.

Learned counsel for the Bank has opposed the writ application as according to him the e-auction sale which has already been notified need not be stayed on the face of the observations of the learned writ Court as contained in paragraph '6' of the order dated 31.01.2018 wherein it has been clearly observed that any auction of the mortgaged property of the petitioners shall abide by the final result of the appeal.

Having heard learned counsel for the parties and on a careful consideration of the records, this Court is of the considered opinion that against the e-auction sale notified on 23.09.2019 which is one of the measures taken under sub-section(4) of Section 13 of the SARFAESI Act, 2002, the petitioners have got a cause of action and the same may be challenged before the Debts Recovery Tribunal where they have already moved earlier against some of the measures taken by the bank on earlier occasion. Further, this Court is of the opinion



that once the learned writ Court while disposing of CWJC No.8511 of 2017 has passed an order directing that any auction of the mortgaged property of the petitioners as may be held hereafter shall abide by the final result of the appeal, any order staying e-auction sale by this Court would amount to modifying the order dated 31.01.2018 passed in CWJC No.8511 of 2017 by a learned coordinate Bench of this Court. In fact the order passed by the learned coordinate Bench presupposes that the auction sale may be held but then that will abide by the final result of the appeal. The said order of learned coordinate Bench has been accepted by the petitioners and as such at this stage there is no reason for this Court to take a different view of the matter that too by passing an order which would be in the nature of modifying the order of the learned writ Court.

This writ application as framed is thus not entertained.
It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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