IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23495 of 2019

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Smt. Kalindi Devi W/o Chakradhar Mishra R/o Chanakyapuri, House No. 174/A, Road No. 4, Block-C, Vaishali Compound, P.S.- Rampur, Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Personnel and Administration, Govt. of Bihar, Patna.
2. District Magistrate, Gaya, District- Gaya, Bihar.
3. Sub- Divisional Officer, Sadar, Gaya.
4. Chief Manager-cum- Authorized Officer, Bank of Baroda, Gaya Main Branch, S.P. Road, Gaya.
5. Presiding Officer, Debt Recovery Tribunal, Wings A and B, 2nd Floor, Karpuri Thakur Sadar, GPOA, Near Rajeev Nagar, P.S. Ashiana Digha Road, Patna- 800025.
6. M/s Pareena Motors Private Ltd. having its Regd. Office at Bansi Sadan, Chand Chaura, Gaya through its Managing Director.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Arbind Kumar Jha
For the Respondent/s	:	Mr.Sheo Shankar Prasad (Sc8)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 29-11-2019

Heard the learned counsel for the parties.

The petitioner / borrower has approached this Court against the order dated 06.02.2018 passed by the District Magistrate, Gaya under Section 14 of the SARFAESI Act, 2002 as also the consequential order passed by the Sub-Divisional Officer, Gaya for taking over the possession of the mortgaged property of the petitioner.

The sole contention raised on behalf of the petitioner is that before passing the order under Section 14 of the Act, the District Magistrate or the CMM, as the case may be, was required to issue notice to the borrower, notwithstanding that there is no such specific provision for notice in Section 14 of the Act.

In support of the aforesaid contention, it has been submitted by the petitioner that requirement of issuing notice to a person against whom an order is passed is based on principle of equity and fair play and such requirement may not be specifically provided in the Statute but is so transcendental and primordial that it cannot be ever waived in a society which is run by the rule of law.

To spike the aforesaid argument, learned counsel for the petitioner has shown to this Court a Division Bench judgement of Allahabad High Court passed in ***Harshad Govardhan Sondagar Versus International Assets***

Reconstruction Co. Ltd. [(2014) 6 SCC 1], wherein it has specifically been held that an *ex-parte* order cannot be passed under Section 14, i.e., a borrower has to be noticed before the secured creditor is assisted in taking over of the mortgaged property. The challenge against the aforesaid order could not succeed before the Supreme Court.

The counsel for the respondent as well as for the State have stated that the action of the District Magistrate has not taken the petitioner by surprise as the objection of the petitioner was not sustained under Section 13(2) of the Act. Consequently, the secured creditor / respondent chose the option available to him under Section 13(4)(a) of the Act. In that view of the matter, it has been argued that the order passed by the District Magistrate and the consequential order of the Sub-Divisional Officer cannot be faulted with.

It is too late in the day to contend that at any stage, the requirement of notice can be waived, notwithstanding its non-inclusion in a specific manner in any Statute. The petitioner as a borrower and as a mortgagor would not have known that the option exercised by the secured creditor would have straightaway led to an action under Section 14 of the Act.

Apart from this, what has really made the order impugned in the present writ petition an *ex-parte* order is that the appeal which was preferred by the petitioner against the order of the creditor bank under Section 13(2) of the Act has yet not been adjudicated by the Debt Recovery Tribunal (DRT).

Thus, the sole contention of the petitioner remains that the orders impugned have been passed behind the back of the petitioner.

For the reason afore-stated, both the orders are set aside.

However, the case is relegated to the District Magistrate, Gaya for passing a fresh order in accordance with law, after affording hearing to the petitioner by giving him sufficient time to respond. The Collector shall issue notice to the petitioner within a period of 15 days from the date of production/communication of a copy of this order and shall conclude the proceedings within a further period of 15 days.

With the aforesaid observation / direction, this petition stands disposed off.

While providing for the aforesaid arrangement, this Court has taken note of the provisions contained in Section 14(3) of the Act which cannot run counter to the basic right of a person for approaching the Court.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	03.12.2019
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