IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10831 of 2018

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1. Praveen Kumar son of Sri Tara Nand Siha, aged 46 years,
2. Babita Kumari, W/o Sri Praveen Kumar, aged 39 yrs.
   Both residing at Akariti House, Chetana Co-operative, North of A.G. Colony, P.S.- Shastrinagar, Patna- 800025 and at Present residing at Village Post- Sisya, P.S.- Korha District and Town- Katihar, PIN- 854108.

... ... Petitioner/s

Versus

1. I D B I Bank Ltd., a body constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act) 1970 having it's Head office at Tower, WTC Complext, Cuffe Parade, Mumbai-400005, through its Chairman cum Managing Director
2. IDBI Bank Ltd. through its A.G.M./ Branch Manager Office functioning at local Retail Asset Centre, Uma Complex, Fraser Road, Patna
3. IDBI Bank through its Authorized Officer office functioning at IDBI Bank Limited, IDBI House, 44, Shakespeare Sarani, Kolkatta

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Chiranjiva Ranjan,Advocate
For the Respondent/s	:	Mr. Shivendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

4 23-08-2019 Heard learned counsel for the petitioner and learned counsel representing the Bank. Yesterday after hearing the parties, this Court had passed the following order:

> "This writ application seems to have been filed against the auction sale notice dated 05.05.2018 issued by the authorized officer of the Bank.
>
> Learned counsel for the Bank has informed this Court that earlier the petitioners had challenged the action taking possession of the property by filing a securitisation application in terms of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the 'SARFEASI Act, 2002')

before the Debts Recovery Tribunal, Patna which was ultimately dismissed. No infirmity was found either with the notice under Section 13(2) or the follow up action under Section 13(4) of the SARFEASI Act, 2002. The said order of the tribunal has attained finality. It is submitted that the petitioners have/had an alternative remedy of filing of another securitisation application against the sale notice in the same manner in which they had availed their remedy against the possession notice. The submission is that the writ application under Article 226 is not fit to be entertained on this ground alone. It is further submitted that the sale has taken place but the bank is unable to issue sale certificate at this stage because of the interim order operating in this case. For this purpose one I.A. No. 5766 of 2018 has been filed on behalf of the Bank. Since the matter is being heard on merit itself, no interim order is required to be passed by this Court.

Prima-facie, this Court is of the view that the writ application is not fit to be entertained. However, as prayed for by learned counsel for the petitioners, the matter is being passed over to be listed tomorrow to enable him to satisfy this Court with his argument."

Today, learned counsel for the petitioner though tried to persuade this Court to entertain this writ application but ultimately what prevailed is that once the Debts Recovery Tribunal has recorded its finding with regard to the notice under Section 13 (2) and then upheld the possession action under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the Act of 2002) vide its judgment dated 14.05.2018 in O. A. No. 08 of 2018, same issues cannot be allowed to be agitated in the present writ application. It is well settled that principles of *res-judicata* in fact applies in the same proceeding between the parties at two different stages.

Having realized that position, learned counsel for the petitioners submits that there are certain infirmities in the sale notice dated 05.05.2018 which he may be allowed to challenge in the present writ application.

Learned counsel for the Bank has opposed the prayer of the petitioner on the grounds inter alia that once the Act of 2002 has been found to be a complete code in itself and statutory remedy of appeal is provided under the Act of 2002 with a forum created thereunder, there is no reason why the jurisdiction of this Court under Article 226 of the Constitution of India be allowed to be used as substituted forum. Reliance in this regard has been placed on the judgment of the Hon'ble court in the case of **United Bank of India Vs. Styawati Tandon & Ors.** reported in **(2010) 8 SCC 110.**

Having heard learned counsel for the petitioner and learned counsel representing the Bank, this Court is of the considered opinion that on the face of there being an adequate and efficacious alternative remedy of a statutory appeal provided under the Act of 2002, the petitioner if so aggrieved by the sale notice may seek his remedy before the Debts Recovery Tribunal. There is no reason for this Court to entertain the writ application under Article 226 of the Constitution of India rendering the remedy provided under the Special Statute redundant. In fact in the case of **Satyawati Tandon** (supra) the Hon'ble Supreme Court has categorically held in paragraph '43' of the judgment that

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies

available under the relevant statute."

In the aforesaid view of the matter, the writ application is not entertained and is being disposed of with liberty to the petitioner to seek their remedy under the statute.

(Rajeev Ranjan Prasad, J)

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