IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21963 of 2018

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Sima Devi, W/o Subodh Kumar Sharma, R/o Mohalla- Sonali Rice mill at Gangti Road Kalisthan Aliganj, Mirzaan hat, police Station- Muzahidpur, District-Bhagalpur.

... ... Petitioner/s

Versus

1. The Regional Manager, Bihar Gramin Bank, Regional Office, Radha Rani Sinha Road, Adampur, Bhagalpur.
2. The Authorized Officer, Bihar Gramin Bank, Regional Office, Radha Rani Sinha Road, Adampur, Bhagalpur.
3. The Branch Manager, Bihar Gramin Bank, Bhikhanpur Branch, Bhagalpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ashutosh Kumar, Adv.
For the Respondent/s : Mr. Ranjeet Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 04-01-2019 Heard learned counsel for the petitioner and learned counsel representing the Bank.

Petitioner, in the present case, is seeking a writ of mandamus directing the Bank to de-seal the rice mile premise including residential house of the petitioner and her husband (Guarantor).

Learned counsel for the petitioner submits that the premise has been sealed on 01.06.2018 in pursuance of a notice dated 08.02.2018 informing the petitioner that the possession of the property has been taken over in exercise of the power conferred upon the Bank/Authorized Officer under the Securitization and Reconstruction of Financial Assests and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as the ‘SARFAESI Act’). Learned counsel submits that the petitioner is ready and willing to settle the account, however, the Bank is not considering the request of the petitioner to enter into the settlement.

Learned counsel representing the Bank submits that from Annexure-2 it will appear that as back as on 23.06.2017 a notice under Section 13(2) of the SARFAESI Act was served on the petitioner calling upon her to pay a sum of Rs.9,47,508/- upto 31.05.2016 with further interest and incidental expense, costs etc. The petitioner failed to respond, thereafter action under Section 13(4) of the SARFAESI Act was taken and from Annexure-3 to the writ application it would appear that the Bank had taken the symbolic possession of the land/house in question. It is further pointed out from the notice published in Dainik Jagran dated 3rd February, 2018 that the Bank had issued a sale notice in which the property in question was put to auction, however, the period fixed in the said sale notice has already expired. Thus, it is submitted that that on the one hand the writ-petitioner failed to avail the statutory remedy of appeal against the action taken under Section 13(4) of the SARFAESI Act as also the action taken for sale of the secured asset and at the same time, the petitioner has failed to deposit the amount as per the demand notice issued under Section 13(2) of the SARFAESI Act, therefore, the writ application is not fit to be entertained.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the petitioner has got statutory remedy of appeal against the impugned action of the Bank which the petitioner has failed to avail. The auction notice was published as back as on 03.02.2018, but till date property has not been auctioned. Thus, the petitioner has still an opportunity to approach the Bank for settlement of the account. This Court would direct the competent authority of the Bank that in case the petitioner approaches the Bank within a period of 30 days from today for settlement of the account and shows her bona fide towards such settlement, her request shall be considered by the Bank in accordance with the guidelines formulated by the bank as regards its recovery policy. A decision on the request of the petitioner towards settlement of the account will be taken within a period of 30 days from the date of submission of such request by the petitioner and it will only thereafter that the Bank may, in case of failure of the petitioner to pay the amount, proceed further towards the sale of the assests.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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