IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5634 of 2020

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M/s Shree Sai Gitanjali Honda Having its office at Pakri Dayal, Ward No.03, P.S.- Pakri Dayal, District- East Champaran through Proprietor namely Tunna Prasad Aged about 46 years, Male, S/o Raghuvir Prasad, Resident of Village- Sheohar ward No. 10, P.S. and District- Sheohar, Bihar.

... ... Petitioner/s

Versus

1. The Canara Bank Through its General Manager Circle officer, Exhibition Road, Patna Bihar- 800001.
2. The Authorized Officer cum Chief Manager Canara Bank, Zonal office, Muzaffarpur.
3. The Branch Manager Sheohar Branch Sheohar.

... ... Respondent/s

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Appearance:

For the Petitioner : Mr. Karandeep Kumar, Advocate

For Canara Bank : Mr. Rajan Ghoshrave, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

3 11-05-2020 In view of nationwide Lockdown on account of Covid-19 global pandemic the matter was mentioned seeking permission to file this writ petition and for its listing as an urgent matter for consideration through video conference. Upon due consideration the Hon'ble the Chief Justice accepted the motion for urgent listing. The matter was accordingly placed for consideration through video conference, earlier on 4.5.2020. The matter was adjourned to enable learned Counsel for the Bank to file counter affidavit, which in the meantime has been filed.

Learned Counsel for the petitioner has also filed a supplementary affidavit. These pleadings have been filed online through e-mail and soft copies thereof transmitted to this Court for consideration.

Today the matter has again been listed for consideration through video conference in virtual courtroom proceeding.

Heard learned Counsel for the parties.

The cause of action for filing the writ petition, as stated by the petitioner, is that the Bank has proceeded for auction sale of his mortgaged immovable assets, being the lands comprising of Khesra Nos. 540, 541 and 542. It is the petitioner's case that he did not have knowledge of such auction sale, which has been finalised on 27.3.2020.

Learned Counsel for the Bank, on the other hand, submits that the petitioner approached the respondent Bank for financial assistance in running his business and had availed a loan from the bank in form of a Cash Credit account with a limit of Rs. 80 lacs on 21.09.2013. The same had been declared as a ***Non-Performing Asset***(***NPA*** for short) on 18.07.2016 as per the extant Reserve Bank of India Guidelines. On the date of ***NPA*** the dues of the Respondent- Bank against the Petitioner was Rs. 8316691/-. Further, the dues of the Respondent- Bank on 31/03/2020 was Rs. 4537754/-.

Proceedings for recovery in accordance with law had been initiated by the Bank as far back as in 2017. Demand notices were issued under the ***The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002*** (hereinafter referred to as the ***SARFAESI Act, 2002*** for brevity). Notice for online auction of the two lands mortgaged with the bank had also been published in the newspaper, pursuant to which one of the lands bearing plot number 230 had been sold earlier, on 31.01.2020. The petitioner has availed his remedy against the same before the

Debt Recovery Tribunal, Patna in SA/51/2020, filed on 24.02.2020.

The other mortgaged land comprising of Khesra numbers 540, 541 and 542 has subsequently been sold after due compliance with the provisions of the ***SARFAESI Act, 2002***, and paper publication of notice dated 25.2.2020, in an online auction dated 27.03.2020.

Learned Counsel for the petitioner disputes and denies service of notice and submits that petitioner was also not having knowledge of the paper publication and sale till 6.5.2020.

The submissions advanced by the petitioner's counsel raises a disputed question of fact whether demand notices were served on the petitioner; and whether petitioner had knowledge of the proposed online auction of the lands, in background of the newspaper publication dated 25.02.2020, of the notice for online auction.

Section 17(1) of the ***SARFAESI Act, 2002*** provides an adequate and efficacious alternative remedy for adjudication of such factual disputes by filing an Appeal before the ***Debt Recovery Tribunal*** (hereinafter referred to as the ***DRT*** for brevity). This court exercising jurisdiction under Article 226 of the Constitution of India would therefore not enter into such disputed issues of fact.

Learned Counsel for the petitioner, submits that he would have approached the ***DRT*** by filing an appeal under Section 17(1) of the ***SARFAESI Act***, 2002, however, on account of nationwide Lockdown in view of global Covid-19 pandemic, he is unable to approach the Tribunal.

Such submission of the petitioner's Counsel is disputed by the learned Counsel for the Bank. He submits that the ***DRT, Patna*** is accepting online filing/e-filing. The petitioner therefore can very well approach the ***DRT*** even during lockdown.

The only aspect therefore, that remains to be considered is the petitioner's limited apprehension expressed in the supplementary affidavit that his appeal is likely to be frustrated on account of the lapse of time. Learned Counsel for the petitioner submits that in respect of the same, before the ***DRT*** he would be relying on judgment of the Apex Court dated 23.03.2020, in ***Suo Motu Writ Petition (Civil) No. 3/2020***.

Since the petitioner proposes to avail his remedies before the ***DRT***, no adjudication is called for in the instant proceedings. Issues raised in the instant proceedings are therefore left open for consideration. Parties would be at liberty to raise all issues before the Tribunal.

The writ petition is disposed of with liberty to the petitioner to avail his remedies in accordance with law.

Submissions advanced by the rival parties, recorded hereinabove may not be considered as an expression of opinion by this court, either in favour, or against either of the parties.

(Madhuresh Prasad, J)

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