IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7629 of 2020

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1. M/s Ganpati Dal Mills Udyog, through its Proprietor, Shri Shyam Sundar Sah, aged about 56 years, male, S/o Jibachh Sah, R/o Mohalla-Union Tola, P.O. and P.S.-Jaynagar, District-Madhubani.
2. Shri Shyam Sundar Sah, S/o Jibachh Sah, R/o Mohalla-Union Tola, P.O. and P.S.-Jaynagar, District-Madhubani, proprietor of M/S Ganpati Dal Mills Udyog, situated at Mohalla-Union Tola, P.O. and P.S.-Jaynagar, District-Madhubani.

... ... Petitioner/s

Versus

1. Central Bank of India through its Branch Manager, Jayanagar Branch, Main Road, Jaynagar, Madhubani.
2. The Branch Manager, Central Bank of India, Jaynagar Branch, Main Road, Jaynagar, Madhubani.
3. The Authorized Officer under SARFAESI (Securitization and Reconstruction of Financial Assets) Act, 2002, Central Bank of India, Jaynagar Branch, Main Road, Jaynagar, Madhubani.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Vagisha Pragya Vacaknavi, Advocate
For the Bank : Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date : 14-09-2020

Heard learned counsel for the petitioners and learned counsel for the respondent-Bank through video conference. Learned counsel for the petitioners undertakes that all defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made, without delay immediately upon resumption of physical functioning of the Court, and in any event within one month thereof. Learned counsel for the respondent-Bank states that he has no objection in this regard and the matter be taken up on merits in view of the stated urgency.

2. The present writ petition has been filed *"for issuance of writ of certiorari or any other appropriate writs/orders/directions for quashing Letter dated 06.07.2020 of the Branch Manager, Central Bank of India, Jaynagar branch, Madhubani rejecting the representation dated 16.06.2020 of the petitioners and directing them to vacate the mortgage house failing which, it will be vacated with the help of administration and the expenditure incurred in such process will also be recovered. The present writ petition is also for commanding the respondents to honour the one time settlement arrived between the petitioners and the respondent/Bank on 29.03.2019 whereby it was agreed that the petitioners will pay Rs. 8,50,000/- (Rupees Seven Lakh Eighty Thousand towards outstanding loan amount + Rpees Seventy Thousand towards legal expenses) under OTS (One Time Settlement) Scheme. The petitioners are ready to pay the aforesaid agreed amount after deducting the amount Rs.2,60,000/- paid towards the aforementioned settlement amount vide receipts dated 27.03.2019, 30.03.2019 and 26.06.2019 for Rs. 1,90,000/-; Rs. 50,000/-; Rs. 20,000/- respectively".*

3. Learned counsel for the petitioners states that a loan of Rs. 13,00,000/- under the Khadi Gram Udyog Scheme was

provided to the petitioners in the year 2004 along with subsidy of Rs. 3,20,000/- by the Central Government. Regular repayments were made from 2004 to 2011, whereafter fresh funds were required to be injected for new, modern and high quality machines but no further loans were advanced. As a result the petitioner's Dal Mill started incurring losses and ultimately the petitioners fell in default in repayment of the loan and for which action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was also initiated. In the meantime, an OTS was arrived at between the parties on 29.03.2019 under which it was settled that the petitioners would pay an amount of Rs. 7,80,000/- along with Rs. 70,000/- towards legal expenses, aggregating to Rs. 8,50,000/-. It was decided that all the dues would be written off if the said payment was made on or before 30.06.2019. The petitioners paid an amount of Rs. 2,60,000/- against the settlement amount but owing to sudden illness, the remaining amount could not be paid. The petitioners express their willingness to pay the remaining amount under the settlement scheme together with interest up-to-date.

4. Mr. Ajay Kumar Sinha, learned counsel appears on behalf of the respondent-Bank and invites reference to the

impugned letter dated 06.07.2020 (Annexure-P/1) in which the Bank has referred to the petitioners' default in repayment of the settled amount under the OTS within the stipulated date, namely 30.06.2019, simultaneously making a fresh offer of OTS granting 7 days' time to respond to the same but the petitioners have not come forward in this respect. It is stated that possession notice under Section 13 (4) of the SARFAESI Act has already been issued to the petitioners with a view to recover the entire outstanding amount inasmuch as the account of the petitioners had been declared NPA as far back as in the year 2011.

5. Having heard the parties and on a consideration of the materials on record, this Court does not find a prima facie case made out for interference. The petitioner has failed to satisfy this Court that there was a reasonable ground for default in making payment of the entire OTS amount of Rs. 8,50,000/- within the stipulated date namely, 30.06.2019. The plea that repayment could not be made owing to illness of the petitioner no. 2 does not appear to be plausible inasmuch as an amount of Rs. 20,000/- towards the earlier OTS was made on 26.06.2019, barely four days before the expiry of time for making payment of the entire amount of settlement. No details of the illness has

also been annexed in the writ petition. A fresh offer for OTS has already been made to the petitioners, which has not been responded to.

6. In the circumstances, the ends of justice will be met if four weeks' time is granted to the petitioners to approach the Bank for purposes of availing the fresh offer of OTS, if so advised, failing which the Bank shall be at liberty to proceed in accordance with law after expiry of the said period.

7. The writ petition stands disposed of with the aforesaid observations.

8. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioners within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15. 09.2020
Transmission Date	N/A