IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25694 of 2019

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Amrendra Kumar Roy, aged approximately 57 years (male), Proprietor of M/S Amrendra Fabricators, Son of Nunu Lal Roy, resident of Jemra, Zamira, P.O.- Tilrath, P.S.- Barauni, Dist.- Begusarai- 851122.

... ... Petitioner

Versus

1. The Bank of Baroda through the Managing Director and Chief Executive Officer, Bank of Baroda, Baroda Corporate Centre, Plot No. C-26, Block, Bandra- Kurla Complex, Bandra (East), Mumbai- 400051.
2. The Executive Director, Risk Management, Bank of Baroda, Baroda Corporate Centre, Plot No. C-26, Block, Bandra- Kurla Complex, Bandra (East), Mumbai- 400051.
3. The General Manager Operations and Services, Bank of Baroda, Head Office, Mandvi, Baroda- 396006.
4. The Zonal Manager Bank of Baroda, Zonal Office, 4th Floor Anand Vihar, West Boring Canal Road, Patna- 800001.
5. The Deputy General Manager Bank of Baroda, Regional Office Purnea, Rambagh Road, Line Bazar, Purnea- 854301.
6. The Assistant General Manager (RH) Bank of Baroda, Regional Office Purnea, Rambagh Road, Line Bazar, Purnea- 854301.
7. The Chief Manager Bank of Baroda, ROSARB Branch, Nehru Nagar, Patliputra, Patna- 800013.
8. The Chief Manager Bank of Baroda, Hiralal Chowk, Begusarai- 851101.
9. The Debts Recovery Tribunal Represented by its Registrar, Karpuri Thakur Sadan, Ashiana Digha Road, Patna- 800025.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bipin Krishna Singh, Adv.
For the Bank	:	Mr. Manish Kishore, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 13-02-2020

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Heard Sri Bipin Krishna Singh, the learned Counsel for the petitioner and Sri Manish Kishore, learned Counsel appearing for the Respondent-Bank.

2. The present writ petition has been filed seeking the following reliefs:-

> (a) for quashing of the notice dated 03.10.2019 issued under the signature of the Registrar, Debts Recovery Tribunal, Patna whereby the petitioner has been asked to appear before the Tribunal and file written statement in regard to O.A. filed by the respondent bank.
>
> (b) for quashing of the notice dated 03.12.2016 issued by the respondent bank to the petitioner under Section 13(2) of the SARFAESI Act vide its communication bearing number BR/BEGUSA/ADV/2016-17/ 39/120 and BR/BEGUSA/ADV/ 2016-17/39/121 both dated 03.12.2016.
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> (c) for quashing the possession notice dated 24.08.2017 issued by the respondent bank as per Appendix IV read with Rule 8(1) of the Security Interest (Enforcement)

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Rules, 2002.

(d) for a direction to the respondents to refrain from taking any action for recovery of loan said to have been given to the petitioner but which in effect was never given and to pay the entire margin money borne by the petitioner and amounts debited to his current account along with interest at the rate 12.00% per annum.

(e) for a direction to the respondents to refrain from taking any coercive measure against the petitioner during the pendency of this writ application.

(f) for a direction to the respondents to pay to the petitioner the entire cost of litigation which has been thrust upon the petitioner as also compensation for loss in business as deemed fit by this Hon'ble Court."

3. The brief facts of the case, according to the petitioner, are that the petitioner is running a small unit in the name of Amrendra Fabricators at Begusarai, Bihar and with a view to expand his business, he had approached the respondent-Bank

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authorities at Begusarai in the year, 2015, whereupon the respondent-Bank had sanctioned a term loan of Rs. 94,00,000/- and the said amount of Rs. 94,00,000/- was disbursed in the current account of the petitioner on 23.04.2015. It is the case of the petitioner that subsequently, a sum of Rs. 1,13,95,756/- i.e. the total sum of the loan amount of Rs. 94,00,000/- and the margin money, already deposited by the petitioner, was transferred to the account of M/s Pawan Automotives Pvt. Ltd. on 24.04.2015, however, the pre-requisites required to be followed by the respondent-Bank were not followed and moreover, the vehicles were also not supplied by the aforesaid dealer to the petitioner herein. Nonetheless, the petitioner had made several deposits in order to save his loan account from turning into a NPA account. It is the case of the petitioner that there is an unholy nexus in-between the dealer and the Bank officials resulting in the petitioner having fallen prey to the deceit of the dealer. It is the case of the petitioner that the

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petitioner had also lodged an FIR with the Barauni Refinery police station on 02.11.2016 in connection with the fraudulent acts of the officials of the respondent-Bank and the vehicle dealer. It is the further case of the petitioner that a notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the respondent-Bank vide letter dated 03.12.2016, whereafter the petitioner had filed his objection vide representation dated 02.01.2017, however, the same was rejected vide letter dated 20.01.2017. It appears that thereafter, the respondent-Bank had also issued a possession notice dated 24.08.2017 under Section 13(IV) of the SARFAESI Act, 2002 read with Rule 8 of the Security Interest (Enforcement) Rules, 2002. In fact, the Bank has also filed an OA bearing OA No. 637 of 2019 before the Debts Recovery Tribunal, Patna, notice whereof, dated 03.10.2019, has been served on the petitioner, asking him to appear and file the requisite show cause reply.

4. The learned counsel for the petitioner submits that the malafides of the respondent-Bank officials

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are apparent and obvious and they have connived with the vehicle dealer and duped the petitioner inasmuch as despite transfer of the entire money to the vehicle dealer, no trucks / vehicles have been delivered to the petitioner's firm. It is further submitted that firstly, the respondent-Bank has not given any cogent reason much less any reason in their letter dated 20.01.2017, whereby and whereunder the objection filed by the petitioner on 02.01.2017, received by the respondent-Bank on 10.01.2017, has been rejected in a mechanical manner. It is further submitted that the Bank officials have committed irregularities and have connived with the vehicle dealer to dupe the petitioner herein. It is also submitted that the respondent-Bank has also instituted a civil suit / certificate case against the petitioner herein, hence, the OA filed before the Debts Recovery Tribunal, Patna is not maintainable inasmuch as two parallel proceedings cannot go on. Lastly, it is submitted that the provisions of the SARFAESI Act is applicable only in case of a borrower, who is

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under a liability to a secured creditor under a security agreement, makes default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as a non-performing asset, and not in cases like the present one, where the account of the petitioner has been debited without any valid mandate and a debt has been created.

5. Per contra, the learned counsel for the respondent-Bank has raised a preliminary objection with regard to the maintainability of the present writ petition inasmuch as only a notice has been issued by the Debts Recovery Tribunal, Patna in the connected OA No. 637 of 2019 and all the aforesaid points can be raised by the petitioner before the learned Tribunal. In this regard, the learned counsel for the respondent-Bank has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***United Bank of India vs. Satyawati Tondon***, reported in (2010) 8 SCC 110, paragraphs no. 42 to 45 whereof are reproduced herein below:-

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"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression “any person” used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

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

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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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government,

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directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

6. I have heard the learned counsel for the parties and perused the materials on record. This

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Court finds that merely a notice has been issued to the petitioner and others by the Debts Recovery Tribunal, Patna in connection with OA No. 637 of 2019 and the petitioner definitely has got the alternative remedy available to him under the SARFAESI Act to file his show cause reply raising all the points, which have been raised in the present case/petition, which is both expeditious and effective inasmuch as the learned Tribunal is bound to take into consideration, the objections filed by the petitioner herein and pass appropriate orders in accordance with law. At this juncture, it would be relevant to refer to the case of ***standard chartered Bank Vs. Noble Kumar***, reported in (2013) 9 SCC 620, paragraph no. 27 whereof is reproduced herein below:-

> "27. The “appeal” under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and

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conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an “appeal” under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process

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> obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

7. In fact, the Hon'ble Apex Court, in a recent judgment rendered in the case of ***State Bank of Travancore vs. Mathew K.C.***, reported in (2018) 3 SCC 85, has held in paragraph nos. 15 and 16 as follows:-

> **"15.** It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the

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person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tondon* [*United Bank of India* v. *Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], has also not been kept in mind before passing the impugned interim order:

> "*46*. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial

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institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/ institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] , *Whirlpool Corpn.* v. *Registrar of Trade Marks* [*Whirlpool Corpn.* v. *Registrar of Trade Marks*, (1998) 8 SCC 1] and *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107]

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> and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

> **16.** The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/ modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."

8. Considering the provisions of the SARFAESI Act and the aforesaid judicial pronouncements of the Hon'ble Apex Court, I find that the present writ petition is not maintainable, hence, the same is

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dismissed, however, with liberty to the petitioner to take recourse to the appropriate legal alternative remedy available to him under the law.

(Mohit Kumar Shah, J)

Ajay/-

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Uploading Date	02.10.2020
Transmission Date	NA

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