IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5755 of 2020

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Smt. Pranita Kumari, W/o Shri Sujeet Kumar, C/o Shri Parmanand Yadav, At Mohalla-Tulsi Mandi, P.O.-Gulzarbagh, Patnacity, P.S. Alamganj, Patna, Bihar.

... ... Petitioner/s

Versus

1. State Bank of India (a body corporate constituted under State Bank of India Act, 1955) through its Chairman cum Managing Director, having its Central Office at Madam Cama Road, Nariman Point, Mumbai, Maharashtra.
2. **Assistant General Manager, State Bank of India**, Stressed Assets management Branch, 5th Floor, Zonal Office Building, Judges Court Road, Anta Ghat, Patna.
3. **M/s Yes Motors Pvt. Ltd**., a company registered under the Companies Act having its registered office at 71, Adharshila Complex, South Gandhi Maidan, P.S.-Gandhi Maidan, Distt.-Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Advocate
Mr. Vijay Kumar Verma, Advocate

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Advocate
Mr. Santosh Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-11-2021

Petitioner has prayed for the following reliefs: -

> "That the present writ petition is being filed for declaration of law that right to property is a constitutional right protected under Art. 300-A of the Constitution of India, which mandates that no person shall be deprived of his property save by authority of law.
> That the petitioner further seeks declaration that the letter dt. 21.02.2020 issued under the signature of respondent no. 2 is in violation of constitutional right by which the fixed deposit under STD A/c No.

37937010669 for Rs.10,05,000/- was put on hold for fifteen days and to realize the amount put on hold to the overdue account.

That the petitioner further seeks direction to respondent Bank to follow the mandate of law operating in the field and release the hold on STD A/c No. 37937010669 and repay the entire amount alongwith upto date interest and cost incurred in filing the present writ petition.

The petitioner further prays for issuance of any appropriate writ/writs, order/orders and/or direction/directions for which petitioner may be found entitled.

Respondent Bank initiated proceedings against Respondent No.3, namely M/s Yes Motors Pvt. Ltd. under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (referred to as the Act) whereby the properties of the debtor/guarantor were put to sale. The mortgaged property did not fetch the amount due and payable by the debtor. The present petitioner, who is the guarantor, had a Fixed Deposit Account with the creditor Bank which was also attached and amount therein adjusted, by the creditor in relation to the amount due and payable by the principal debtor.

Clause 8 of the agreement entered into by the creditor with the debtor, as also the guarantor (the present petitioner) reads as under:-

"8. That the Bank shall be entitled to adjust, appropriate or set-off or exercise lien of or on all monies, securities, goods, instruments held to the creditor for the benefit of the Guarantors on any account or coming into the control or possession of the Bank in any of its branches whether for any specified purpose or otherwise with or without any particular mandate and whether singly or jointly, towards the discharge and satisfaction of the liability of the Guarantors hereunder."

Thus, creditor has put on hold the amount of Rs. 10,05,000/- fixed deposit under STD A/C No.37937010669 with a right to set-off. To such effect, petitioner, vide impugned notice dated 21.02.2020 was asked to show cause, to which, instead of responding, present petition stands filed.

The said notice to show cause reads as under:-

"State Bank of India

Smt. Pranita Kumari, W/O Shri Sujeet Kumar, C/O Shri Parmanand Yadav, At Mohalla-Tulsi Mandi, PO Gulzarbagh Patna City PS Alamganj, Patna-800 007, Bihar	Smt. Pranita Kumari, W/O Shri Sujeet Kumar, Bari Pahari, PO- Bari Pahari PS-Agamkuwan Patna-800007 Bihar

Ref: SAMB/19-20/CLO-II/996(A) Date 21.02.2020

Madam,

SAM-STRESSED ASSET MANAGEMENT
Borrower: M/s Yesh Motors Pvt. Ltd.
NPA A/C No.32913828678
Hold on STDR A/c No.37937010669 of Rs.10,05,000/-

Please refer to the captioned subject. In this connection, we have already informed earlier that the captioned company's credit facility account(s) was maintained by our SME Boring Road Branch (6540), Patna but due to irregularities of accounts and non-payment of installments, accounts turned NPA and migrated to SAMB, Patna on 03/09/2016 for hard recovery measures.

2. It is evident that due to default of payment and you being a Guarantor, we have sent the demand notice on 06/08/2016 for payment of whole dues. Despite our several correspondences, you have neither responded nor paid the dues of the bank as on date. Being a Guarantor, you are fully responsible for the payment of whole dues as under the provision of law. Henceforth, this Branch will monitor/control your account and initiate all steps needed to recover the loan immediately.

3. In the view of the above, the competent authority has put a hold on your STD A/C No.37937010669 for Rs.10,05,000/- under right to set off. Therefore you are requested to deposit the total overdue amount of the captioned unit within 15 days after receipt of this letter failing which we shall be constrained to realize the amount put on hold to the overdue A/Cs and also initiate further legal recourse for recovery of whole dues.

It is for your information and records.

Yours faithfully

Sd/
Assistant General Manager."

In our considered view, the present petition is totally misconceived, more so, in view of the law laid down by Hon'ble Apex Court in **Allahabad Bank vs. Canara Bank and another, (2000) 4 SCC 406**, which confines the jurisdiction for adjudication, recovery and execution of the debt to the tribunal under a special statute. Also, it is not disputed before us that proceedings under the Act stand initiated by the creditor against the debtor/ guarantor.

In this view of the matter, the present petition stands dismissed.

Liberty to the petitioner to pursue the matter before the appropriate forum.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2021
Transmission Date	