

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8883 of 2020

1. Gautam (male), aged about 39 years, son of Sunil Kumar Singh,
2. Neha Kumari (female), aged about 26 years, wife of Gautam,
Both resident of Cingus Vihar, Indian Oil Campus, Behind Mandal Honda,
Forbisganj, P.O. and P.S.- Forbisganj, District- Araria.

... .. Petitioner/s

Versus

1. The Bank of Baroda, Vadodara (Gujarat) through the Managing Director.
2. The Managing Director, the Bank of Baroda, Vadodara (Gujarat).
3. The Authorized Officer-cum-Chief Manager-cum-Branch Manager, Bank of Baroda, Forbisganj Branch, Ram Manohar Lohia Path, Hospital Road, Forbisganj, District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Respondent/s : Mr. Manish Kishore, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 08-02-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ajit Kumar Singh, learned counsel for the petitioners and Mr. Manish Kishore, learned counsel for the Bank of Baroda (hereinafter referred to as the 'Bank').

3. On 03.12.2020, the Court had recorded the following order:

"The matter has been heard via video conferencing due to circumstances prevailing on account of COVID-19 pandemic.

2. Mr. Ajit Kumar Singh, learned counsel for the petitioners and Mr. Manish Kishore, learned counsel for the Bank of Baroda (hereinafter referred to as the 'Bank'), have



assisted the Court.

3. The petitioners have moved the Court for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the possession notice dated 11.06.2020 issued under the signature of the Authorized Officer, Respondent no.3 whereby and where under the Respondent no.3 had taken the possession of property since 11th day of June of the year 2020 inter alia on the ground that the petitioners have failed to re-pay the installment of term loan amount since December’ 2019 and onwards.*

*(II) For issuance of an appropriate in the nature of **MANDAMUS** commanding and directing the Respondent Bank to not take possession of the property of the petitioners on the ground that the property in question is only the residential house of the petitioners as also due to losses in business because of flood as well as locked down in the country due to pandemic COVID, 2019, the petitioners could not make payment of installment of term loan since December, 2019 and onwards coupled with the facts that the petitioners are ready to up-to-date the overdue amount till the end of December, 2020, if the situation will become normal.*

*(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Bank to not charge the extra amount or interest over the installment amount of term loan which*



has not been deposited by the petitioners due to Pandemic COVID, 2019 coupled with the facts of locked down in the country since 22nd March, 2020.

(IV) For issuance of any other appropriate writ/ writs, order/ orders, direction/ directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

4. The matter has been taken up out of turn on motion moved by learned counsel for the petitioners yesterday pointing out that for recovery of outstanding dues against the petitioners, the Bank is going to auction-purchase their residential house on 5th December, 2020, i.e., day after tomorrow. As the Bank had not been served notice, learned counsel undertook to do the same yesterday itself and file supplementary affidavit. Though in the supplementary affidavit, it has been stated that the respondent no.3 refused to accept the notice, but it has also been stated that he has sent the same through e-mail to the Bank.

5. Mr. Manish Kishore, learned counsel for the Bank submitted that there was some communication gap and the Branch Manager had asked the petitioners to send copy of the writ petition on the e-mail of the Bank, which has been done and he has received the same also through the Branch and appearing today.

6. Even yesterday and today also at the outset, learned counsel for the petitioners took a categorical stand that they shall be paying the up-to-date dues to the Bank, in terms of their loan account, latest by 31st of December, 2020, and the Court may grant them protection from their residential house being auctioned.

7. Learned counsel for the Bank submitted that the Bank is agreeable to the same.



However, he further prayed that the Court may put conditions on the petitioners so that they do not default in future. Learned counsel for the Bank submitted that the Court may also consider the fact that one bid has been received in the matter and if the petitioners default, the whole process will have to be undertaken again.

8. Having regard to the aforesaid, the Court directs that the Bank shall not proceed with the auction-sale proposed for 5th December, 2020. However, it may receive bids from interested parties till the date and time indicated in the notice, but the same shall not be proceeded with until further orders of the Court.

9. After giving some time to learned counsel for the petitioners as well as the Bank to take instructions with regard to there being a mutually agreed way out so that the interest of the Bank is also not compromised and the petitioners are also not visited with severe consequences, the Court records its appreciation for the cooperation extended on behalf of the Bank, especially due to which the following arrangement has been arrived at, for the present, which would be subject to review by the Court on the next occasion.

(a) The petitioners shall clear their up-to-date balance as per the original loan schedule till 31st December, 2020, prior to that date.

(b) Thereafter, in January, 2021, the petitioners shall deposit an amount of Rs.6,00,000.00 (six lacs) by way of advance installments.

10. The matter be listed on 8th February, 2021, among the top five cases when affidavit shall be filed, both on behalf of the petitioners as well as the Bank, with regard to completion of the exercise, as indicated above.



11. At the request of learned counsel for the petitioners, let them appear before the respondent no. 3 within one week from today and the Bank will calculate the total dues which the petitioners are required to pay to make their loan account up-to-date till 31st December, 2020. Let the same be done within three working days of the petitioners appearing before the respondent no. 3.

12. The Court would make it clear that if there is any default on the part of the petitioners in discharging the obligation as per the undertaking given before the Court, it may entail serious consequence for the petitioners.

13. Let the name of Mr. Manish Kishore, learned counsel, be printed in the cause list in the column of the respondents.”

4. Today, learned counsel for the Bank submitted that they have filed affidavit on 06.01.2021 in which they have stated that though the petitioners were required to pay Rs. 9,53,924/- by 31st December, 2020 and thereafter a further sum of Rs. 6,00,000/- by January, 2021; they have deposited only Rs. 1,00,000/- on 31st December, 2020 and thereafter Rs. 19,000/- in January, 2021. Learned counsel submitted that the Court may not grant any further indulgence to the petitioners.

5. Learned counsel for the petitioners submitted that they have got into an agreement for sale of some other property of theirs but the entire payment has not been made and, thus, further indulgence was sought.

6. Having considered the facts and circumstances of



the case and submissions of learned counsel for the parties, the Court would note that it is not required to re-visit the matter on merits as it had considered all the issues on 03.12.2020 and due to cooperation by the Bank, by which it had agreed to hold the auction and grant the petitioners a chance to make their default up-to-date and then pay as per the Court's schedule, sufficient time was given to the petitioners. It was submitted that the Court had granted time for making payment as had been asked by learned counsel for the petitioners and, thus, it was in the form of an undertaking before the Court as the auction had been put on hold and the petitioners not even showing any semblance of compliance by miserably failing to live up to their commitment, have disintitiled themselves from any inference by the Court, more so, in its present prerogative, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India, especially in light of the conduct of the petitioners.

7. Thus, the Court finds that the petitioners having miserably failed in their commitment before the Court and the Bank also being agreeable to an exercise only as an exception in the present case, they do not deserve any further indulgence.

8. For reasons aforesaid, the application stands dismissed.



9. The Bank is free to proceed in the matter, in
accordance with law, for realisation of its dues.

(Ahsanuddin Amanullah, J)

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