

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19636 of 2021

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Anamika Banka, Wife of Shri Nawal Kishore Banka, Resident of 1st Floor,
Banka Bazar, Motijheel, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Bank of India, through the Chairman - Cum - Managing Director,
State Bank of India, Corporate Centre, State Bank Bhawan, Madame Cama
Road, Mumbai - 400021.
2. The Assistant General Manager, State Bank of India, SME Branch,
Ballygunge, 50A, Gariahat, Fifth Floor, Kolkata - 700019.
3. The Authorised Officer, State Bank of India, SME Branch, Ballygunge, 50A,
Gariahat, Fifth Floor, Kolkata - 700019.
4. The Union of India through the Secretary Ministry of Finance, Govt. of
India, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Shri Gautam Kumar Kejriwal, Advocate Shri Alok Kumar Jha, Advocate Shri Harshit Gupta, Advocate Shri Mukund Kumar, Advocate
For the Respondent/s	:	Shri Dr. K. N. Singh, ASG Shri Sanjeev Kumar, Advocate

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

Date : 16-12-2021

The petitioner has prayed for the following relief/s :-



- (i) For issuance of a writ or order a direction restraining the respondents and any other person from executing and from taking any action in furtherance to the auction sale notice dated 05.09.2021 published in the newspaper on 05.09.2021 whereby the residential premises of the petitioner have been put on auction sale alongwith other assets during the pendency of SARFAESI Case No. 180 of 2021 filed by the petitioner under section 17 of The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (hereinafter referred to as the "act 2002" for short) before learned DRT Patna;
- (ii) For issuance of a writ or order a direction granting the relief of ad interim status quo ante in favour of the petitioner as the respondents have proceeded with auction of the assets of the petitioner in light of the auction sale notice dated 05.09.2021;
- (iii) For further holding and a declaration that the respondents could not have proceeded against the petitioner till the application filed by the petitioner under section 17 of the act 2002 is heard by the learned DRT Patna the bench whereof is not functional due to non-availability of the presiding officer;
- (iv) For further holding and a declaration that keeping in view the present circumstances wherein the bench of learned DRT Patna is not presided by any presiding officer whether permanent or in-charge, the petitioner's case cannot be taken up for hearing even on point of grant of interim relief and therefore the petitioner cannot be rendered remedy less;
- (v) For further holding and a declaration that the right to legal remedy is one of the constitutional right of the petitioner and therefore in a situation in hand which is exceptional in nature, the respondents cannot proceed against the petitioner till the petitioner gets an opportunity to avail appropriate statutory remedy before learned DRT Patna upon availability of a presiding officer;
- (vi) For any other reliefs to which the petitioner is found entitled to in the facts and circumstances of this case.



Learned counsel for the Respondent-Bank states that the present petition has become infructuous inasmuch as public auction, subject matter of the present petition, did not fructify.

It is brought to our notice that the proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is pending before the Debt Recovery Tribunal in relation to which the Government has now issued notification authorising the competent authority to preside over the Tribunal.

It is expected from the petitioner to move an application seeking interim protection in the proceedings which are pending before the appropriate authority.

Shri Gautam Kumar Kejriwal, learned counsel for the petitioner states that this shall positively be done within a period of two weeks from today.

We only hope and expect the respondent not to precipitate the matter by taking coercive steps during this period.

As such, the present petition stands disposed of in



the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	17.12.2021
Transmission Date	

