

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20023 of 2021

1. Balajee Ingot India Private Ltd having its registered office at 2/7, Sarat Bose Road, Sixth Floor, Suit No. 3, Vasundhara Building, Kolkata- 700020 through one of its directors namely Ramesh Kumar Daruka male aged about 46 Years son of Ratan Lal Daruka resident of Naya Bazar, Pachna Road, Near Telephone Exchange, Ward No. 22, P.S. town and district Lakhisarai- 811311.
2. Nirmal Kanodia, son of Subhkaran Kanodia resident of Naya Bazar, Lakhisarai, District- Lakhisarai- 811311.

... .. 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 Chief Manager, State Bank of India, Lakhisarai Branch, Naya Bazar, Lakhisarai.
3. The Stressed Assets Recovery Branch having its office at, State Bank of India, Main Branch Building, West Gandhi Maidan, Patna- 800001 through its Assistant General Manager.
4. The Authorised Officer, The Stressed Assets Recovery Branch having its office at, State Bank of India, Main Branch Building, West Gandhi Maidan, Patna- 800001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Jha, Advocate Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Singh, Advocate Mr.Sanjeev Kumar, Advocate

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

Date : 14-12-2021

Petitioners have prayed for the following relief(s):-



- (i) For issuance of a writ or order or a direction restraining the respondents and any other person from executing and from taking any action in furtherance to the auction sale notice dated 30.10.2021 published in the Hindi newspaper on 31.10.2021 (Amarakant - 5) whereby the immovable assets of the petitioner have been put on auction sale on 06.12.2021 in light of the pendency of SARFAESI Appeal No. 126 of 2020 being an application 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 Delhi Recovery Tribunal Patna (hereinafter referred to as learned DRT Patna for short) and also such action being in breach of the order dated 21.09.2021 passed in the said appeal by learned DRT Patna;
- (ii) For issuance of a writ or order or a direction granting the relief of ad interim status quo ante in favour of the petitioner in case the respondents would proceed or have proceeded with auction of the immovable assets of the petitioner in light of the auction sale notice dated 30.10.2021 published in the Hindi newspaper on 31.10.2021;
- (iii) For further holding and a declaration that the respondents cannot proceed against the petitioner while the interim order of stay dated 21.09.2021 passed by learned DRT Patna qua the same set of immovable properties is operative and the application filed by the petitioner under section 17 of the act 2002 is pending before learned DRT Patna for hearing on merits;
- (iv) For further holding and a declaration that the respondents could not have issued the auction sale notice in question which is in fact an attempt to overreach the order dated 21.09.2021 passed by learned DRT Patna with an apparent object to frustrate the whole purpose, meaning and scope of SARFAESI Appeal No. 126 of 2020 as the procedure of auction sale followed by issuance of sale certificate under the act 2002 in favour of the intending purchaser would conclusively create third party rights and open a scope of multiplicity litigations which may ultimately crush the valuable rights of the petitioner;
- (v) For further holding and a declaration that keeping in view the present circumstances wherein the bench of learned DRT Patna is not provided by any presiding officer, whether permanent or in charge, the petitioner's case cannot be taken up for hearing even on poem of grant of interim relief and therefore the petitioner cannot be rendered remedy less;
- (vi) For further holding and a declaration that the right to legal remedy is one of the constitutional rights 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;
- (vii) For any other relief to which the petitioner is found entitled in in the facts and circumstances of this case.



Shri Sanjay Kumar Thakur, 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 petitioners 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 petitioners 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	16.12.2021
Transmission Date	

