

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.675 of 2018

1. The United Bank Of India, Through Its Managing Director , Head Office at 11, Hemantu Basu Sarni, United Tower, 5th Floor, Kolkata-700001
2. The Managing Director, The United Bank Of India, Head Office at 11, Hemantu Basu Sarni, United Tower, 5th Floor, Kolkata-700001
3. The Executive Director, The United Bank of India, Head Office at 11, Hemantu Basu Sarni, United Tower, 5th Floor, Kolkata-700001
4. The General Manager (Credit), The United Bank of India, Head Office at 11, Hemantu Basu Sarni, United Tower, 5th Floor, Kolkata-700001
5. The Chief Regional Manager, the United Bank of India, Regional Office, 2nd Floor Abhay Bhawan, Fraser Road, Patna-800001
6. The Senior Manager, The United Bank of India, Sasaram Branch, Sasaram, District-Rohtas.
7. The Senior Manager (Credit), The United Bank of India, Regional Office, 2nd Floor Abhay Bhawan, Fraser Road, Patna 800001
8. The Authorized Office, Regional Office, 2nd Floor, Abhay Bhawan, Fraser Road, Patna-800001.

... .. Petitioner/s

Versus

1. M/s Om Shivam Modern Rice Mill Pvt. Ltd. Having its Regional Office at Village & Post – Konar, PS- Shiosagar, District – Rohtas through its Managing Director Ajay Kumar
2. Ajay Kumar, Son of Shri Sudarshan Sah, the Managing Director of M/s Om Shivam Modern Rice Mill Pvt. Ltd. Resident of Mohalla-Raj Colony, 174C, Company Sarai, Ward No.9, PO and PS- Sasaram, District-Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Binod Bihari Sinha
For the Respondent/s	:	Mr.Din Bandhu Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 08-12-2022 Heard learned counsel for the parties.

The petitioner-United Bank of India (for short “the Bank”) is aggrieved by the order dated 27.02.2018 passed in Title Suit No. 297 of 2016 by which the learned trial court has appointed Advocate Commissioner in order to ascertain the



location and position of the suit land.

Learned counsel for the petitioners submits that the Bank issued a demand notice for recovery of loan amount from the respondent under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”). The objection filed by the respondents-plaintiff was considered by the Bank and the same was rejected. After rejection of the objection, possession notice under Section 13(4) of the SARFAESI Act was issued on 09.03.2016. The letter dated 09.03.2016 issued under Section 13 (4) of the SARFAESI Act has been made the subject matter of the suit filed by the respondent bearing Title Suit No. 297 / 2016. The suit is not maintainable in view of Section 34 of the SARFAESI Act and law laid down by the Hon’ble Supreme Court in *State Bank of Patiala versus Mukesh Jain & Anr.* reported in (2017) 1 SCC 53 and by this Court in *Hira Nand Lall v. Santosh Kumar Badhwani* reported in (2012) 2 PLJR 837. Learned counsel further submits that a petition under Order 7 Rule 11 of the C.P.C. has already been filed by the defendant-Bank before the learned trial court in the aforesaid suit for rejection of the plaint on the ground that suit is barred under the provision of Section 34 of the SARFAESI Act



but the learned trial court without deciding the petition filed under Order 7 Rule 11 of the C.P.C. has proceeded in the matter and by the impugned order Advocate Commissioner has been appointed for local inspection of the land.

On the other hand, learned counsel for the respondents submits that the suit which has been filed does not relate to SARFAESI Act. According to learned counsel for the respondents the loan amount has already been repaid to the satisfaction of the Bank and as of today no amount is payable by the respondents- plaintiff. He next submits that relief prayed in the title suit is not related with the subject matter of the SARFAESI Act and its provisions.

In reply, learned counsel for the Bank objects to the submission made by learned counsel appearing for the respondents-plaintiff that entire loan amount has been repaid / returned by the plaintiff.

I have heard learned counsel for the parties. It transpires that the maintainability of the suit itself has been raised by the petitioner claiming that the suit has been filed arising out of a letter dated 09.03.2016 issued by the Bank under Section 13 (4) of the SARFAESI Act and as such, the suit is not maintainable in view of specific bar prescribed under



Section 34 of the SARFAESI Act.

Accordingly, in my opinion, in the interest of justice, the petition filed under Order 7 Rule 11(d) of the C.P.C. ought to have been decided first by the trial court before proceeding with the suit in question.

In the result, the order dated 27.02.2018 passed in Title Suit No. 297 of 2016 is kept in abeyance. The learned trial court is directed to decide the point of maintainability of the suit raised by the petitioner by filing a petition under Order 7 Rule 11(d) of the C.P.C. first.

The order dated 27.02.2018 shall be dependent upon the final outcome of the petition under Order 7 Rule 11 of the C.P.C.

With the aforesaid observation and direction this application stands disposed of.

(Anil Kumar Sinha, J)

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