IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7241 of 2017

==

Smt. Prema Devi, W/o Shiv Chandra Prasad @ Rai Jee, Mohalla-Badi Mirjapur, P.S.- Kasim Bazar, P.O. + District- Munger.

... ... Petitioner

Versus

1. The Central Bank of India, through the Regional Manager, Gaya Region , Shanti Bhavan, Rameshwar Path, opposite Bisar Talab (Tank), District-Gaya, Pin-823001.
2. The Regional Manager, the Central Bank of India, Gaya Regional Branch, Shanti Bhavan, Rameshwar Path, opposite Bisar Talab (Tank), District-Gaya, Pin-823001.
3. The Authorised Officer, the Central Bank of India, Gaya Regional Branch, Shanti Bhavan, Rameshwar Path, opposite Bisar Talab (Tank), District-Gaya, Pin-823001.
4. The Branch Manager, Central Bank of India, Munger Branch, Bari Bazar, P.B. No.23, Pin- 811201, District-Munger.
5. Sri Rajani Kant Mishra, S/o Jagdamba Prasad Mishra, Lakarigola Bekapur, Munger, Pin- 811201, presently residing at Puraniganj, Konark Talkies Road, Opposite Sanjivani Hospital, P.S.- Kasim Bazar, Munger, District-Munger.
6. The State of Bihar through the District Magistrate, District- Munger.
7. The Sub Divisional Magistrate, Sadar, District- Munger.

... ... Respondents

==

Appearance :

For the Petitioner	:	Mr. Purushottan Kumar Jha, Advocate
For the Respondents-State:		Mr. Anil Kumar Singh, GP-26
For the Central Bank	:	Mr. Ajay Kumar Sinha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 27-06-2022

Heard Mr. Purushottam Kumar Jha, learned counsel for the petitioner and Mr. Ajay Kumar Sinha, learned counsel for the respondent-Central Bank of India. Mr. Anil Kumar Singh, learned GP-26 is also present for the State.

2. The prayers of the petitioner in the present application are as under:-

> "(i) For issuance of an order / direction or a writ in nature of certiorari for quashing the sale certificate dated 10.09.2013 issued under the signature of the Authorized Officer of the Respondent Bank, whereby and whereunder the only house of the petitioner has been auction sold at a throw away price below the reserve price.
>
> (ii) For issuance of an order / direction or a writ in the nature of certiorari for quashing the order of SDM, Sadar, Munger, as contained in Memo No.2061 dated 09.02.2017 (Annexure-11), whereby the whereunder, he has been deputed the officers for dispossessing the petitioner from her only house at the instance of the respondent bank.
>
> (iii) For issuance of an order / direction or a writ in nature of mandamus, commanding the respondents concerned of the Bank to allow the petitioner to sale the property in question as per her choice to enable her to repay the debt amount with a further direction to the respondent Bank authorities to accept the payment made by the petitioner towards repayment of her debts.
>
> (iv) For issuance of an order / direction or a writ in the nature of certiorari for quashing the

judgment dated 21.09.2016 (Annexure-7) passed by the presiding officer of the Debts Recovery Tribunal, Patna, whereby and whereunder S.A. No.85 of 2016, came to be dismissed, on the sole ground of delay / limitation.

(v) For issuance of an order / direction or a writ in the nature of mandamus directing the presiding officer of the Debts Recovery Tribunal, Patna to hear and decide case / matter of the petitioner on merits with full sympathy, keeping in mind the constraints of the petitioner as regards notices and lack of knowledge under the peculiar facts of the case.

(vi) For issuance of an order, direction for grant of any other relief or relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case."

3. In short, the case of the petitioner is that she and her husband Shiv Chandra Prasad had jointly availed a housing loan of Rs.2,76,000/- sanctioned on 20.01.2006 with repayment term of 108 months from the Central Bank of India. Since her husband was ailing with cancer, she moved to Mumbai along with her daughter and stayed there continuously between 2010 and 2015. Subsequently, her daughter also fell ill and died on account of some ailment. The death of her daughter created acute mental shock and agony as a result of which she could not

repay the loan amount in time. Subsequently, she came to know that her house has been auction sold by the respondent Bank and the respondent no. 5, the auction purchaser, is attempting to take over the possession of the house.

4. Learned counsel for the petitioner submitted that as soon as the petitioner came to know about the auction sale, she filed her application on 22.07.2015 before the District Magistrate, Munger through Public Grievance Redressal Cell, Munger for staying the execution of delivery of her house to the auction purchaser. He further contended that in response to the application filed before the Public Grievance Redressal Cell, Munger, the respondent-Bank filed its response on 27.07.2015. He contended that subsequently the petitioner approached a lawyer for the purpose of filing an application before the Debt Recovery Tribunal under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). The said application was dismissed vide impugned order dated 21.09.2016 by the learned Presiding Officer of the Debt Recovery Tribunal, Patna only on the ground of limitation.

5. Learned counsel for the petitioner further contended that the learned Presiding Officer while dismissing

the application of the petitioner did not consider the genuine humanitarian and lawful ground and the hardship being faced by the petitioner. He also failed to consider the plea of the petitioner that she is ready to pay the debts due on her.

6. On the other hand, Mr. Ajay Kumar Sinha, learned counsel for the respondent-Central Bank of India submitted that since the petitioner defaulted in repayment of loan as also the interest and had paid a meager amount of Rs.9,800/- only between 18.04.2006 to 21.09.2011. The account was classified as bad asset and demand notice under Section 13(2) dated 27.01.2012 was issued but when payment was not done by the borrower, possession notice under Section 13(4) of the SARFAESI Act dated 29.05.2012 was issued and thereafter auction notice dated 05.02.2013 was issued for auction but no bidder turned up. Thereafter again valuation was done on 27.02.2013 and, accordingly, a fresh reserve price was fixed at Rs.6.80 lacs. A fresh sale notice was published on 22.06.2013 with reserve price of Rs.6.80 lacs. In the next sale process single bidder Sri Rajanikant Mishra (respondent no.5) turned up and the property was sold to him for Rs.6,90,000/- and on receipt of the full price, the sale certificate was issued on 10.09.2013. He contended that since the application filed by the petitioner was

hopelessly time barred, the Debt Recovery Tribunal, Patna dismissed the limitation petition filed on behalf of the petitioner. He contended that there is no error in the impugned order passed by the Presiding Officer of the Debt Recovery Tribunal, Patna.

7. We have heard learned counsel for the parties and carefully perused the record.

8. It would be evident from the impugned order passed by the Debt Recovery Tribunal, Patna that the application filed on behalf of the petitioner was time barred. There was a delay of two and a half years in approaching before the Tribunal. A perusal of the impugned order would suggest that the petitioner had not explained the reason for the inordinate delay caused in filing the application. In that view of the matter, relying upon the judgment of the Hon'ble Supreme Court in **Basawaraj & Anr. Vs. The Special Land Acquisition Officer** since reported in **(2013) 14 SCC 811**, the Tribunal dismissed the limitation application. Consequently, the SARFAESI application was also dismissed.

9. At this stage, it would be apt to note that against the order impugned passed by the Debt Recovery Tribunal, the petitioner had a statutory remedy of appeal before the Debt

Recovery Appellate Tribunal. The petitioner did not avail of the statutory remedy available to her. Even otherwise, we see no merit in this application.

10. In that view of the matter, we are not inclined to entertain this application under extraordinary writ jurisdiction.

11. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

(Dr. Anshuman, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2022
Transmission Date	NA