

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2193 of 2022

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1. M/s Shankar Enterprises Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar), through its proprietor Uday Shanker @ Uday Shanker Choudhary.
 2. Uday Shanker @ Uday Shanker Choudhary Son of Late Bishun Choudhary Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar) proprietor of M/s Shankar Enterprises).
 3. Abhay Shanker @ Abhay Shanker Choudhary Son of Late Bishun Choudhary Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar).

... .. Petitioner/s

Versus

1. The Union of India Department of Financial Service, Ministry of Finance, Government of India, New Delhi, through its Secretary.
2. The State Bank of India, madam Kama Road, Mumbai (Maharashtra) through its Chairman.
3. The Assistant General Manager, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West of Gandhi Maidan, Patna (Bihar).
4. The Authorized Officer, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna main Branch Building, West of Gandhi Maidan, Patna (Bihar).
5. The Branch Manager, State Bank of India, Patory Branch, Patory, District- Samastipur (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Ms. Anju Kumari @ Anju Narain, Advocate
For the Respondent/s	:	Mr. Dr. Krishna Nandan Singh, ASG Mr. Shiv Narayan Thakur, Advocate Mr. Sanjay Singh Thakur, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)



Date : 15-02-2022

Heard learned counsel for the parties.

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

- (a) For issuance of a writ or order restraining the respondent Bank from executing and taking any action in furtherance of sale notice dated 07.01.2022 (Annexure -- P/16 of the writ petition) whereby and whereunder the property of the petitioners have been put on e-auction sale on 13.02.2022 during pendency of the SARFAESI Application bearing S. A. No. 135 of 2021 filed by the petitioners under section 17 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to in short as 'SARFAESI Act, 2002') before the Debts Recovery Tribunal at Patna
- (b) For further holding and declaring that the respondent Bank can't proceed against the petitioners till the SARFAESI Application No. 135 of 2021 filed by the petitioners under section 17 of the SARFAESI Act, 2002 is pending before the Debts Recovery Tribunal (hereinafter referred to in short as 'DRT') and the same is heard and disposed of in accordance with law because of the fact that post of Presiding Officer, permanent or in-charge, is vacant since 01.01.2022
- (c) For further holding and declaring that right to remedy is one of the constitutional rights of the petitioners and therefore in an extra-ordinary situation in hand, which is unprecedented in nature, the respondent Bank can't proceed against the petitioners till the petitioners get an opportunity to avail the appropriate statutory remedy before the Presiding Officer, DRT at Patna upon availability of the Learned Presiding Officer
- (d) For any other relief or reliefs for which the petitioners are entitled under law as well as on facts.



We are entertaining the present petition in view of the fact that at this point in time, the Debt Recovery Tribunal is not functional on account of non-appointment of Presiding Officer.

Shri Sanjay Singh Thakur, learned counsel for the respondent Bank states that the process of auction is underway. Though he could not verify, but also not dispute the statement made by Shri Rajendra Narayan, learned Senior Counsel appearing on behalf of the petitioner that in the month of February, 2022 itself petitioner has deposited a sum of ₹35 lacs.

We notice that the total amount due and payable by the petitioner as on 19th of January, 2021 was ₹72,20,329.36.

We are satisfied about the petitioners' *bona fides* of settling the matter with the respondent Bank.

Additionally, petitioners undertake to deposit a sum of ₹5 lacs within a period of seven days from today.

As such, we dispose of the present petition on the following mutually agreeable terms:-

(a) Petitioners shall make themselves available in the office of Respondent No. 3, namely the Assistant General Manager, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch



Building, West of Gandhi Maidan, Patna (Bihar), on 22nd of February, 2022 at 10:30 A.M. with a proposal, complete in all aspect, for-(i) re-determining the amount due and payable by the petitioners to the Bank; (ii) the period within which the remaining amount shall be deposited by the petitioners to the Bank, which, in the present case is six equal monthly instalments; (iii) seeking waiver of interest as per the policy of the Bank as also in terms of guidelines issued by the Reserve Bank of India;

(c) The Bank shall take a decision on the petitioner's request within a period of four weeks thereafter;

(d) Such decision has to be in accordance with law; the guidelines issued by the Reserve Bank of India and maintaining parity;

(h) Till such time the decision is taken on the petitioners' request, *status quo* as of now i.e. 15th of February, 2022, 1:30 P.M. shall be maintained and the process of sale shall not be allowed to be concluded.

(f) If the petitioners fail to repay the amount in terms of the schedule fixed by the Bank on mutually agreeable terms, it shall be open for the Bank to take



recourse to the remedies in accordance with law, including sale of mortgaged/hypothecated property;

(g) Should the need so arise, petitioners shall be at liberty to take recourse to such other remedies as are available in accordance with law;

Petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	17.02.2022
Transmission Date	

