IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3046 of 2022

==

Md. Irshadul Haque Son of Md. Izharul Haque Resident of Mohalla Khalilpura, PO and PS- Phulwarisharif, District- Patna.

... ... Petitioner/s

Versus

1. Indian Bank, a Govt. of India undertaking through its Managing Director and CEO 2 NS Road Kolkata 700001.
2. Chairman, INDIAN Bank 2 NS Road Kolkata 700001.
3. Zonal Manager, INDIAN Bank office at Budh Marg, Patna.
4. Chief Manager cum Authorized Officer, INDIAN Bank Budh Marg, Patna.
5. Chief Manager cum Manager, INDIAN Bank at Patna University Branch, Ashok Raj Path, Patna.
6. Nageshwar Authomobiles Proprietor Shri Vidhya Nand Kumar Verma at Machhariyawan, near Primary School Fatuah Patna Bihar Pin- 800009.
7. Shri Vidhya Nand Kumar Verma Son of Nageshwar Kumar at C-22, Nitya Sadan, Keshri Nagar, Ajanta Colony, Rajiv Nagar, Patna- 800024.
8. Smt Manju Kumari Wife of Shri Vidhyanand Kumar Verma at C-22, Nitya Sadan, Keshri Nagar, Ajanta Colony, Rajiv Nagar, Patna- 800024.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Diwakar Prasad Singh, Advocate
For the Respondent/s	:	Dr. Binay Kumar Singh, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 20-04-2022 Petitioner has prayed for following relief(s) : -

(i) That to quash the sale of House of the petitioner (a guarantor) undertaken by respondent Bank in view of Section 133 of Contract Act due to subsequent variance in terms of contract made by the Principal (Debtor) & the creditor.

(ii) That a declaration be issued that the petitioner is not liable to pay any amount due to subsequent direct contract between the Principal (Debtor) & the creditor by way which Term Loan of Rs.10,00,000/ (Ten Lakh) was allowed to which the petitioner is not the surety/guarantor as such the intended Sale Notice dated 13.01.2021 (Annexure-3) liable to be set aside & the respondent Bank may kindly be directed to produce the original Loan Documents executed by the Petitioner in order to prove justifiable demand from the petitioner.

(iii) That challenging the intended Sale Notice dated 13.01.2021 (Annexure-3) issued for realization of Rs.4390836/ (Forty three Lakhs Ninety thousand Eight hundred thirty Six) which is highly excessive & without any legal basis since the petitioner was guarantor to only Cash Credit of Rs.1,00,000/ (One Lakhs only) & Term Loan of Rs.18,00,000/ (Eighteen Lakh) whereas has not executed any Loan Documents to Term Loan of Rs.10,00,000/(Ten Lakh) as such the Sale Notice is highly illegal & exorbitant as such liable to be set aside & the respondent Bank is under obligation to produce the original Loan Documents executed by the Petitioner in order to prove justifiable demand Notice to the petitioner as guarantor.

(iv) That respondent had placed single House Property of the Petitioner under e-Auction on 30.01.2021 for the reserve Price of Rs.15,39,000/ (Rupees Fifteen Lakhs Thirty Nine Thousands only) which is highly meager & unjustified giving the market rate to the House property of the Petitioner. Particularly the same was undertaken without giving any opportunity of hearing & statutory Notice to the Petitioner under the Securitization & Reconstruction of Financial Assets & Enforcement of Security interest Act 2002 while none of the property to actual borrower was put under Auction.

(v) That a declaration be issued that the defendant/respondent Bank illegally allowed Term Loan of Rs.10,00,000/ (Ten Lakh) to the borrower in collusion with each other without obtaining consent from the petitioner in writing as such no charge can be created on House property i.e. Land & building under Thana No.54, Khata No.126 having Cadastral Survey Plot No.687 under Tauzi No.5573 under the municipal boundary of Danapur Nagar Parishad while the property is joint in nature governed by Islamic

Law of inheritance.

(vi) That respondent Bank be restrain from taking physical possession of the Residential House property without following due process of Law concerning Land & building under Thana No.54, Khata No.126 having Cadastral Survey Plot No.687 under Tauzi No.5573 under the municipal boundary of Danapur Nagar Parishad.

(vii) That respondent Bank be restrain from executing the sell Deed to Residential House property i.e. Land & building under Thana No.54, Khata No.l26 having Cadastral Survey Plot No.687 under Tauzi No.5573 under the municipal boundary of Danapur Nagar Parishad in favour of any third party.

(viii) That defendant be permanently restrained from making any transfer of Mortgaged House property of the Petitioner i.e. Residential House property i.e. Land & building under Thana No.54, Khata No. 126 having Cadastral Survey Plot No.687 under Tauzi No.5573 under the municipal boundary of Danapur Nagar Parishad in favor of any third party & further the defendant be permanently restrained to issue any Sale Certificate in favor of any third party with regards to residential House of the petitioner as described aforesaid.

ix) That for grant of any other relief or relief's to which the petitioner be found entitled in law be granted to them."

After the matter was heard for some time, finding the Court not in favour of the submissions made by the learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that the petitioner shall be content if the petitioner is permitted to withdraw the present petition, with liberty to initiate appropriate proceedings before the appropriate forum and to take recourse to such other alternate remedies which are equally efficacious in law.

Prayer allowed.

The petition is disposed of as withdrawn with the liberty aforesaid.

Interlocutory application(s), if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/chn

U			