IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Write Jurisdiction Case No.3505 of 2022

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1. Krishna Kumar Sinha, Son of Shyam Bihari Lal, Resident of Mohalla-Sri Ram Colony, Bengali Colony Road, Town-Patna City, P.O.-Begumpur, P.S.-Chowk, District-Patna.
2. Smt. Sunita Sinha, Wife of Sri Krishna Kumar Sinha, Resident of Mohalla-Sri Ram Colony, Bengali Colony Road, Town-Patna City, P.O.-Begumpur, P.S.-Chowk, District-Patna.

... ... Petitioner/s

Versus

1. The Union of India Department of Financial Service, Ministry of Finance, Government of India, New Delhi, through its Secretary
2. INdian Bank (Erstwhile Allahabad Bank), Patna Main Branch, Budh Marg, Town and District-Patna (Bihar), through its Chief Manager
3. The Authorized Officer, Indian Bank (Erstwhile Allahabad Bank), Patna Main Branch, Budh Marg, Town and District-Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjiv Kumar, Advocate
For the UoI	:	Dr. K. N. Singh, ASG
For the Bank	:	Mr. Binay Kr. Singh, Advocate

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-03-2022

Heard learned counsel for the parties.

The petitioners have prayed for the following relief/s :-

(a) For issuance of a writ or order restraining the respondents No. 2 and 3 from executing and taking any action in furtherance of sale notice dated 17.02.2022 (Annexure – P3 of the writ petition) whereby and whereunder date of e-auction sale of the dwelling house of the petitioners was fixed as on 09.03.2022 during pendency of the SARFAESI Application bearing No. 101 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 (hereinafter referred to in short as 'DRT') at Patna, wherein post of the Presiding Officer, permanent or in-charge, is vacant since 01.01.2022

(b) For further holding and declaring that the respondent No. 2 and 3 can't proceed against the petitioners till the SARFAESI Application No. 101 of 2021 filed by the petitioners under section 17 of the SARFAESI Act, 2002 is pending before the DRT at Patna 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 respondents No. 2 and 3 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 petitioner is 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.

Learned counsel for the petitioners states that the petitioners are ready and willing to settle the matter with the respondent-Bank. To show their *bona fides*, petitioners undertake to deposit a sum of Rs. Three Lacs in two installments, out of which Rs. Two lacs will be deposited on or before 17.03.2022 and the rest amount of Rs. one lac on or before 31.03.2022.

Learned counsel for the respondent Bank has no objection.

Taking a holistic view, we dispose of the present petition on the following mutually agreeable terms:-

(a) Petitioners will positively deposit a sum of Rs. Three Lacs in two installments, out of which Rs. Two lacs will be deposited on or before 17.03.2022 and the rest amount of Rs. one Lakh on or before 31.03.2022. ;

(b) Petitioners will make themselves available in the office of Respondent No. 3, namely, the Authorized

Officer, Indian Bank (Erstwhile Allahabad Bank), Patna Main Branch, Budh Marg, Town & District, Patna, on 17.03.2022 at 10:30 A.M. along with receipt of deposit of Rs. Two lacs, with a proposal, complete in all aspect, for-(i) re-determining the amount due and payable by the petitioners to the Bank; (ii) seeking waiver of interest on the principal amount due and payable in terms of the policy of the Bank as also the guidelines issued by the Reserve Bank of India;

(c) The Bank shall take a decision on the petitioners' request within a period of two weeks thereafter;

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

(e) Till the time proposal is pending with the authorities, no coercive action shall be taken against the petitioners.

(f) If the petitioners fail to deposit a sum of Rs. three lacs, as undertaken by them, or 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.

Petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	