IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4122 of 2022

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Alok Kumar Son of Sheo Pujan Pandey, Resident of House No. A/6, Bank of India Colony, Opposite Taxila Apartment, Police Station- Shastri Nagar, District- Patna.

... ... Petitioner/s

Versus

1. Bank of India through its Chairman cum Managing Director, Star House C-5, G Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400051.
2. Authorizing Officer, Bank of India, Zonal Office, R- Block Chauraha, Patna, Bihar- 800001.
3. Chief Manager, Bank of India, Jamal Road Branch, Patna.
4. Bharat Petroleum Corporation Limited, through its Chairman cum Managing Director, Address- Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard Estate, P.B. No. 688, Mumbai- 400001.
5. The Territory Manager, Bharat Petroleum Corporation Limited, Address- 70 feet, Bye Pass, Post Office- Pakri via Anishabad, Police Station- Beur, District- Patna, Pin Code- 800002.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan, Advocate
For the Respondent/s	:	Mr. Sidhartha Prasad, Advocate
		Mr. Om Prakash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-03-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

(i) For a writ of certiorari or any other writ, order or direction to quash the e-auction sale notice dated 19.02.2022 issued by the Authorized Officer of the respondent bank in respect of property mentioned at Sl. No. 10 (i) and (ii) for which e-public auction is scheduled to be held on 25.03.2022 as the mortgage created by the bank over these properties is defective and illegal and thus no power under SARFAESI Act could be invoked in respect of these properties.

ii) For a writ of certiorari to quash the possession notice dated 29.01.2022, published in Dainik Bhaskar dated 03.02.2022 issued in exercise of power conferred under Section 13(4) of the SARFAESI Act as in respect of property mentioned at Sl. No. 10(i) and (ii) as it is neither a secure asset nor any security arrangement has been created by the owner in respect of these properties. Thus, the entire action initiated against these properties under SARFAESI Act is illegal.

iii) For a direction that the sale notice is illegal and void as it has failed to mention that details of encumbrances over the property in respect of Sl.

No. 10(i) as it is leased to Bharat Petroleum Corporation Limited for 35 years, vide registered Lease Deed No. 12665 dated 10.11.2006 prior to the execution of mortgage and thus possession is protected under the 65A of the Transfer of Property Act for the unexpired period till the year 2041.

(iv) For any other relief / reliefs to which the petitioner is found entitled in the facts and circumstances of the case.

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 petitioner states that petitioner is ready and willing to submit a proposal to the respondent Bank for (a) settlement of the dues payable by the petitioner to the respondent Bank (b) waiver of component of interest/penalty in terms of the policy of the Bank as also the guidelines issued by Reserve Bank of India and (c) fixing the schedule for repayment of the amount due and payable.

Additionally, to show his *bona fides*, petitioner undertakes to deposit a sum of of Rs. 30 lacs (thirty lacs only) with the respondent Bank within a period of one week from today.

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

(a) Petitioner shall positively deposit a sum of ₹30,00,000/- (thirty lacs) with the respondent Bank within a period of one week from today;

(b) Petitioner shall make himself available in the office of Respondent No. 2, namely the Authorized Officer, Bank of India, Zonal Office, R- Block Chauraha, Patna, Bihar- 800001 on 11th of April, 2022 at 10:30 A.M. with a proposal, complete in all aspect, for-(i) re-determining the amount due and payable by the petitioner to the respondent Bank; (ii) seeking waiver of interest/penalty 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 petitioner's request within a period of eight 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) Until the decision is taken, *status quo* as on date be maintained and no further coercive steps shall be taken against the petitioner;

(f) If the petitioner fails to deposit a sum of Rs. Thirty lacs, as undertaken by him, 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, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	