

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4248 of 2022

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Shashi Abhishek Son of Alok Kumar Resident of House No. A/6 and A/7,
Bank of Inida 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 Tettitory Manager, Bharat Petroleum Corporation Limited, Adress-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, Adv
For BPCL	:	Mr. Siddhartha Prasad, Adv
		Mr. O.M. Prakash Kumar, Adv
For the Bank	:	Mr. Ajit Kumar Sinha, Adv

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

Date : 09-05-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) 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 the existence of prior existing lease affects the risk undertaken by the Bank, while providing the loan, and therefore it will be presumed that the Bank had consented to the risk that comes as the consequences of existing tenancy, and therefore since the

lawful possession is with the lessee under a valid lease the secured creditor cannot take possession of the secured asset until the lawful possession of the lessee get determined if the secure creditor chooses to take any measures specified in Section 13 of the SARFAESI Act.

(ii) 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) for which e-public auction is scheduled to be held on 25.03.2022 as without taking possession of the secured asset which is not with the borrower, but with the valid lessee e-auction sale notice cannot be published for sale of the secured asset, which action of the respondent Bank is in contravention of the provision of Act and Rule.

(iii) For a direction that the sale notice is illegal and void as it has failed to mention that details of encumbrance pertaining to existing tenancy with a Clause for renewal in respect of Sl. No. 10(i) as it is leased to Bharat Petroleum corporation Limited for 35 years, vide registered leased Deed NO. 12665 dated 10.11.2006 prior to the execution of mortgage and thus possession is protected for unexpired period till the year 2041 with renewal clause and no ejectment order could be passed in respect of the property under SARFAESI Act.”

In view of the fact that Debts Recovery Tribunal is now functional, learned counsel for the petitioner, under instructions, seeks permission to withdraw the present petition with liberty to take recourse to such other appropriate remedies, as are otherwise available, in accordance with law.

Permission granted.

As and when any such request is made by the petitioner before the Tribunal, the same shall be considered and decided expeditiously.

Since petitioner has been pursuing the remedies before this court, the question of limitation shall not come in the way moreso in view of the current pandemic COVID-19.

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

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

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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