

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4211 of 2022

1. M/s Madhu Traders Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar), through its proprietress Smt. Madhu Choudhary.
2. Smt. Madhu Choudhary Wife of - Sri Abhay Shanker @ Abhay Shanker Choudhary Village - Hasanpur Surat, P.O. and P.S. - patory, District- Samastipur (Bihar) (Proprietress of M/s Madhu Traders)
3. Abhay Shanker @ Abhay Shanker Choudhary Son of Late Bishun Choudhary Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar).
4. Uday Shanker @ Uday Shanker Choudhary Son of Late Bishun Choudhary Village - Hasanpur Surat, P.O. and P.S. - Patory, District- Samastipur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Home Department, Government of Bihar, Patna.
2. The District Magistrate, Samastipur, District- Samastipur.
3. The Additional Collector - cum- Additional District Magistrate, Samastipur, District- Samastipur.
4. The Circle Officer, Patory, District - Samastipur.
5. The State Bank of India, Corporate Centre, Madam Kama Road, Mumbai (Maharashtra) through its Chairma.
6. 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).
7. The Authorized Officer, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West of Gandhi Maidan, Patna (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Ms. Anju Kumari @ Anju Narain, Advocate
For the Respondent/s	:	Mr. Manish Kumar (GP 4)
For the Bank	:	Mr. Prabhat Kumar Sharan, Advocate

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

(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.)

2 01-04-2022

Petitioners have prayed for the following relief(s):

(a) For issuance of writ in the nature of certiorari in quashing the order dated 28.01.2022 (Annexure-P/18 of the writ petition) passed by the Additional Collector-cum-Additional District Magistrate, Samastipur (Respondent No. 3) in SARFAESI Case No.15 of 2022 (Authorized Officer, State Bank of India, SARB, Patna Vs. M/s Madhu Traders & Uday Shankar Chaudhary), whereby and where under the Circle Officer, Patory (Respondent No. 4) has been authorized as Magistrate to give assistance in taking physical possession by the Authorized Officer, SARB, Patna (Respondent No. 7) over the properties of the petitioners with the help of Police force under section 14 of the SARFAESI Act, 2002 after fixing the date for taking such physical possession.

(b) For issuance of a writ or order restraining the respondents from taking physical possession over the properties of the petitioners under section 14 of the SARFAESI Act, 2002 pursuant to the order dated 28.01.2022 (Annexure-P/19 of the writ petition) passed by the Additional Collector-cum-Additional District Magistrate, Samastipur (Respondent No. 3) in SARFAESI Case No. 15 of 2022 till S.A. No. 79 of 2020 filed by the petitioners under section 17 of the SARFAESI Act,



2002 before the Debts Recovery Tribunal at Patna is heard and disposed of in accordance with law, as the same is not being heard at present because of the fact that post of Presiding Officer, permanent or in-charge, is vacant since 01.01.2022.

(c) For any other relief or reliefs for which the petitioner is entitled under law as well as on facts.”

Learned counsel for the petitioners states that the petitioners are ready and willing for one time settlement of the dispute by approaching the respondents with a proposal to fix the modalities for repayment of the rest mutually agreed amount in equal monthly installments, spread over a period of six months and/or waiver of the component of interest in terms of the guidelines issued by the Bank as well as by the Reserve Bank of India.

To establish his bona fides, petitioners are ready and willing to deposit a sum of Rs. 15 Lakh within a period of one month, out of which they are ready to deposit Rs.5 Lakh within one week.

Statement accepted and taken on record.

Shri Prabhat Kumar Sharan, learned counsel for the Bank, states that the property stands auction-sold, but possession not handed over.

In view of the statement made by the petitioners as



also learned counsel for the Bank, the petitioners are directed to approach Respondent No.7, namely The Authorized Officer-State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West of Gandhi Maidan, Patna, within one week after depositing Rs. 15 Lakh within a period of one month, by filing a proper application with a proposal to fix the modalities for repayment of the rest of the mutually agreed amount in equal monthly installments, spread over a period of six months and/or waiver of the component of interest in terms of the R.B.I. Guidelines and on principles of parity. Petitioners shall also bear the charges for conducting the auction. The concerned bank authorities are directed to consider and decide the same within next two months.

Needless to add, while considering such request, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

Possession of the property, which stands auction-sold, shall not be handed over till such time the decision is taken on the proposal of the petitioners. Also no coercive action shall be taken pending consideration of proposal.

If the petitioners do not deposit the sum of Rs.15 Lakh in the manner indicated above within the time stipulated, and



commit breach of the undertaking, respondents shall be at liberty to hand over possession of the property, which already stands auction-sold.

If aggrieved by the said order, the petitioners shall have liberty to approach this Court by way of separate petition(s), if so required and desired.

Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch.

Petition is disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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