IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10085 of 2022

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Mr. Zille Kibria S/o Maqbool Ahmad, Indian, residing and having permanent place of address at Gulistan Mohalla, Phulwari, P.S. Phulwarisharif, District-Patna, Bihar- 801505

... ... Petitioner

Versus

1. The Zonal Manager, Allahabad Bank having its Zonal Office at Bihar Textbook Corporation Premises, Budh Marg, Patna, Bihar 800 001.
2. The Branch Manager, Allahabad Bank, having its Branch Office at Indian Bank, Railway Station Road, Nai Sarai, Phulwarisharif, Patna Pin Code 801505 (0612-2555436)
3. Mr. Sigma Enterprises through its Proprietor Md. Abdullah, S/o Md. Ataullah having its place of business at Kachahari Mohalla, Near Imam Bara, Phulwarisharif, Patna, Bihar (801505)

... ... Respondents

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Appearance :

For the Petitioner/s : Ms. Mahima Sharma, Adv.

For the Respondent/s : Mr. Nishi Nath Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 25-07-2022

Heard Ms. Mahima Sharma, learned counsel for the petitioner.

2. In the instant application, the prayers of the petitioners are as under:

> (i) For issuance of a writ in the nature of mandamus directing the respondents to consider the case of the petitioner in light of the COVID-19 pandemic and other factors/difficulties mentioned hereunder and agree to enter into

settlement in terms of the guidelines of the Reserve Bank of India.

(ii) For consequential reliefs in the shape of issuance of a writ/direction in the nature of certiorari for quashing order dated 02.05.2022 passed by Presiding Officer of the learned Debt Recovery Tribunal, Patna.

(iii) For issuance of a writ/direction in the nature of certiorari quashing sale deed in respect of the property of the petitioner comprised at Gulistan Mohalla, Phulwari, P.S. Phulwarisharif, District-Patna, Bihar-801505 in the favour of Mr. Quadirul Hasan Chisti as arbitrary, illegal, unconstitutional and ultra vires as per the provisions of Section 9 of the Security Interest (Enforcement) Rules, 2002.

(iv) For issuance of a writ/direction in the nature of Certiorari for quashing demand notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (hereinafter "**The SARFAESI Act, 2002"**) dated 28.07.2021 as the account of the Respondent 2nd Set has been turned to Non-performing Assets (NPA) without following the procedure and norms in this regard.

(v) For issuance of a writ/ direction in the nature of certiorari for quashing notice of possession issued under Section 13(4) of the SARFAESI Act, 2002 with rule 8 of Security Interest

(Enforcement) Rules 2002, (Hereinafter referred to as 'Rules') dated 17.10.2019 issued by the Authorized Officer of Respondent (1st Set).

(vi) For issuance of a writ/ direction in the nature of certiorari for quashing c-auction sale notice dated 08.11.2019 published in the newspaper under the SARFAESI Act, 2002 read with proviso to rule 8(6) of the Security Interest (Enforcement) Rules, 2002 at the instance of the authorized officer of the Respondent (1st Set).

(vii) For issuance of a writ in the nature of mandamus for directing the bank authorities to consider the proposal of the Petitioner for clearing off the outstanding amount against the mortgaged property and opportunity to be given to the petitioner for making payment of the same.

(viii) For issuance of a writ in the nature of mandamus for directing the bank authorities for staying all the coercive action including proceeding under the SARFAESI Act, 2002 against the petitioner which is initiated by the bank in a bias and arbitrary manner and to keep the entire proceeding under SARFAESI Act, 2002 abeyance till the disposal of this writ application.

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

3. It is pertinent to note here that in the present application, the petitioner is aggrieved by the notice issued

under Section 13(2) of the SARFAESI Act on 11.06.2019 calling upon him to pay a sum of Rs. 16,16,771/- alongwith interest and charges due as he stood guarantor to the Respondent 2nd set who had availed a cash credit loan facility to the tune of Rs.15,00,000/- and had mortgaged his land (property) measuring 2.25 decimal situated at Mauza-Ishopur, Thana-Phulwarisharif, District-Patna as the loan account of the Respondent 2nd set turned as a non performing asset. He is also aggrieved by the possession notice dated 17.10.2019 issued under the signature of the Authorized Officer, Allahabad Bank under Section 13(4) of the SARFAESI Act whereby the bank authorities have taken notional possession of the collateral security provided by the petitioner.

4. Section 17(1) of the SARFAESI Act, 2002 provides that any person aggrieved by any of the measures referred to sub-section (4) of Section 13 taken by the secured creditor or his authorized officer may make an application to the Debts Recovery Tribunal having jurisdiction in the matter.

5. Since the petitioner has not availed of the statutory remedy available to him under Section 17 of the SARFAESI Act, we are not inclined to entertain this application under extraordinary writ jurisdiction.

6. Accordingly, the writ petition is dismissed with liberty to the petitioner to avail of other remedies which may be available in law.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27-07-2022
Transmission Date	NA