

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11597 of 2022

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Parshuram Singh Son of Late Vishwanath Singh, Resident of Village-Malahi Babu Tola, P.O. and P.S.-Malahi, District-East Champaran. As a Partner of M/S Jai Hanuman Cold Storage, Village-Gujrauliya (Malahi), Main Road, Malahi Bazar, Areraj, East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector-cum-District Magistrate, East Champaran at Motihari.
2. The Authorized Officer, Chief Manager, UCO Bank, Zonal Office, Maurya Lok Complex, 4th Floor, Block A, New Dak Bunglow Road, Patna-800001.
3. The Branch Manager, UCO Bank Branch, Bettiah, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Tiwari, Advocate

For the Respondent/s : Mr. Sarvesh Kumar, GP 24
Mrs. Sheela Sharma, Advocate

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

Date : 18-08-2022

Heard learned counsel for the parties.

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

1. That this is an application for issuance of Writ in the nature of Certiorari to quash the Order dated 12.8.2021, passed by Respondent No.1 in



SARFAESI Act Case No.84/2019 on the basis of an application, filed by Respondent No.2 Under Section 14 of the SARFAESI Act on 27.12.2019 and also for quashing of the entire proceeding of the aforesaid SARFAESI Act Case against the petitioner on amongst others the following

Grounds:-

- I. For that the impugned Order dated 12.8.2021 has been passed by Respondent No.1 in SARFAESI Act Case No.84/2019 against one of the partner namely, Sonu Kumar, who has only interest as partner for 10% only in Firm and by the same Order the Respondent No.1 has also directed to Respondent No.3 to deposit the amount for deputation of Magistrate and Police Officer to take possession of the mortgage property by one of the partner without any notice to the petitioner, who was made party to the said proceeding as grantor/partner.
- II. For that under the aforesaid Act, Respondent No.1 is authorized authority to pass Order on an application by authorized Officer for taking possession of the property against which loan/mortgage is granted by Bank within a period of 30 days from the date of application and if no Order is passed within 30 days, the Respondent No.1 is required to pass Order within sixty days in aggregate for which reasons has to be recorded in writing by the Respondent No.1 Under Sub-Section (ix) of Section 14 of SARFAESI Act, but the Respondent No.1 passed the Order without notice to the petitioner after expiry of period for about one year, 8 months from the date of making application by Respondent No.2 on 27.12.2019.
- III. For that from the impugned Order it appears that without application of mind by Respondent No.1, it is stated that one of the partner Sonu Kumar



has mortgaged the entire property of the firm, which will effect the interest, right and title of the petitioner, if the possession is taken over by the Bank without any notice and hearing to the petitioner.

IV. For that the impugned Order is passed by Respondent No.1 which he cannot pass after expiry of sixty days and it is without Jurisdiction.

V. For that this petitioner came to know about the aforesaid Order when a notice is published in News Paper namely, "Prabhat Khabar" on 29.4.2022, which does not relate to only one partner namely, Sonu Kumar against the firm named as M/s Jai Hanuman Cold Storage, Malahi and inquired about the case and obtained the Certified copy of the entire Order Sheet of the aforesaid case bearing SARFAESI Act Case No.84 of 2019 on 27.6.2022.

VI. For that the impugned Order is violative or Principle of Natural Justice as well as violative of Article 21 of the Constitution of India and livelihood of the petitioner will be taken away if the property will be taken away by the Respondent No.3 on the basis of illegal impugned Order dated 12.8.2021, passed by the Respondent No.1.

Impugned order dated 12.08.2021 passed by the Collector, East Champaran at Motihari, to our reading, is in violation of the principles of natural justice.

According to the petitioner, no notice was ever issued by the Collector; nor any opportunity of hearing was afforded. The order entails civil consequences and also no appeal



against the order lies before any appellate authority under the Statute.

In this view of the matter, we quash and set aside the order dated 12.08.2021 (Page-23) passed by the Collector, East Champaran at Motihari with the direction to the parties to appear before the Respondent No. 1, namely, the Collector-cum-District Magistrate, East Champaran at Motihari on 05.09.2022 at 10:30 A.M., who shall, after affording opportunity of hearing to all concerned enabling them to file materials in support of their contentions, decide the issue within a period of two months thereafter.

Parties shall fully cooperate and not take any unnecessary adjournment.

Liberty reserved to the petitioner to challenge the order, should the need so arise subsequently.

The petition is disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

Sujit/Ashwini

(S. Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	22.08.2022
Transmission Date	

