

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19602 of 2021

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M/S Gauri Fertilizer Store through its Proprietor Sri Ravi Kumar (Male aged about 39 Years) Son of Birbal Prasad Gupta, Resident of Village Bengha Ward No. 4, by pass Road, Saharsa PS and District – Saharsa. Petitioner/s

Versus

1. UCO Bank, a Govt. of India undertaking through its Managing Director and CEO UCO Bank 8th Floor 10, BTM Sarani Kolkata.
2. Regional Manager UCO Bank, office at Mourya Lok Complex, Block - A, 4th Floor, Dak Bangla Road Patna - 800001.
3. Zonal Manager UCO Bank, Office at Sona Jageshwar Complex, Traffic Chowk, Begusarai 851101.
4. Chief Manager cum Authorized Officer UCO Bank, Office at Sona Jageshwar Complex, Traffic Chowk, Begusarai - 851101.
5. Branch Manager UCO Bank Dharamshala Road Saharsa.
6. District Magistrate Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s : Ms. Anuradha Singh (SC21)

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

Date : 28-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

- (i) That for issuance of appropriate writ order or direction or writ in the nature of mandamus or declaration that the Law requires primacy of the right of the mortgager to redemption under Section 60 of the Transfer of Property Act & the Petitioner made considerable payment of over 24 Lakhs after receipt of Ref No. ZOBE/REC/BR/2020-21/119 dated 08.01.21 issued Under Section 13(4) SERFAESI Act & read with Rule 8 of the Security interest (Enforcement) Rules 2002 & sought time of

12 Months to clear the entire debt & has cleared entire debt by today & deposited the amount by Toady within aforesaid 12 Months as such prays for issuance of appropriate writ order or direction or writ in the nature of mandamus directing the respondent not to dispossess the Petitioner from the mortgaged property i.e. single House of the Petitioner.

- (ii) That for issuance of appropriate writ order or direction or writ in the nature of mandamus or declaration that the Auction sale is vitiated not only because there is Single Bidder & valuable house of the Petitioner was e-auctioned without any Competitive price but due to fraud & collusion with the auction purchaser who have grossly undervalued the property & hurriedly sold the single house of the Petitioner to single bidder & without any competition & in no Case the House of the Petitioner which has got Market Value of more than 2.5 Crores

can be auctioned in 48 Lakhs simply because the Petitioner had obtained business loan which was repaid with interest by today. As such a writ of mandamus be issued commanding the respondent that the auction sale is vitiated due to the fact that (A) The Petitioner made huge payment of over 24 Lakhs during the Course of Korona Pandemic after receipt of Notice under Section 13(4) of the SERFAESI Act when the business was shut down in entire nation (B) By application dated 31.03.21 & 16.08.21 the Petitioner specifically submitted that he is ready to repay the amount within 12 months & actually repaid the entire amount with interest (C) due to fraud & collusion between the Branch Manager, Chief Manager & auction purchaser Price of

the House was grossly undervalued from their Market rate (D) The Petitioner has single house to survive (D) The petitioner has cleared & Wright off entire dues within the aforesaid 12 Months time as such a declaration be issued that the conspicuous Auction sale made by the Respondent by secret deal between the Branch Manager, Chief Manager & the single bidder cum auction purchaser cannot sustain in the eye of Law as such the same is vitiated & required to be set aside.

- (iii) That for issuance of appropriate writ order or direction or writ in the nature of mandamus commanding the Respondents not to dispossess the Petitioner from his House until decision of instant writ application & further permit the petitioner to be in possession of the subject property since the respondent entered into fraud & collusion with the auction purchaser & hurriedly

auctioned the Mortgaged property on 31.08.21 or on subsequent date not known to the Petitioner since the Petitioner was not given any Notice after Ref. No. ZOBE/REC/BR/2021-22/115 Dated 09.08.21 despite payment of over 24 Lakhs made by the petitioner after receipt of Notice under Section 13(4) SERFAESI Act & until today the Petitioner has cleared entire debt to the respondent Bank as such the respondent be directed not to create any third party right, interest, lien etc regarding the single House of the Petitioner.

- (iv) That for issuance of appropriate writ order or direction or writ in the nature of mandamus by way of declaration that the respondents acted like property dealers & Hon'ble Supreme Court of India in the Case of Ram Kishun Vs State of UP (2012)11SCC 511 Poignantly observed thus

13 Undoubtedly, public money should be recovered & recovery should be made expeditiously but it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted like property dealers & be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions” (Emphasis supplied) .

As such whether under the given factual position when the petitioner had deposited over 50% amount & brought the

Account below the Cash Credit amount allowed to the Petitioner & there was worldwide Korona pandemic as such the Respondent ought to have not entered into Auction sale & (A) ought to have permitted the Petitioner to avail Cash Credit facility under the allowed limit or (B) ought to have allowed 12 months time to pay back the entire debt but the respondent hurriedly auctioned the House of the Petitioner on base price to single bidder & brought the Petitioner on road when the petitioner was ready to deposit the entire amount which is deposited by know & within the sought period as such whether the entire action sale made in favor of respondent is vitiated.

- (v) That for issuance of appropriate writ order or direction or writ in the nature of mandamus commanding the respondents that the Auction dated 31.08.2021 is vitiated since the Property was sold to Single bidder due to illegal rash dealing of officers of the Bank & the further the Bank illegally denied the petitioner an opportunity to discharge their liability within a Fixed period of 12 months despite an representation made under Rule-3A to Security Interest (Enforcement) Rules 2002 inserted by SO

103(E) Dated 02.02.2007 applicable with effect from 02.02.2007 & the respondent chooses not to return any reply to representation made under Rule-3A to Security Interest (Enforcement) Rules 2002 when the Petitioner had sought 12 Months time by his application dated 31.03.21 & 16.08.21 as such a declaration be issued commanding the respondent that the symbolic Possession to Secured assets by the Authorized

Officer is not in accordance with the provisions of the SERFAESI Act & Rule-3A of Security Interest (Enforcement) Rules 2002 due to their arbitrary exercise of power & apparent violation of principles of natural Justice.

- (vi) That for issuance of appropriate writ order or direction or writ in the nature of mandamus or declaration that the Possession of Secured assets by the Authorized Officer to the respondent Bank is not in accordance with the provisions of Rule-9 of Security Interest (Enforcement) Rules 2002 since the Property of the Petitioner was put on sale by letter No. ZOBE/REC/BR/2021-22/115 Dated 09.08.21 without following the Statutory Period of 30 days while the Petitioner was making Payments & had paid altogether Rs. 24, 07,170 (Rupees Twenty Four Lakhs Seven thousands one hundred Seventy) & the bank was dealing with the Property dealer with ignorance & negligence to the right of the Petitioner guaranteed under Article 300A of Constitution of India read with Section 60 of Transfer of Property Act. As such the intentional ignorance of

fact despite representation made under Rule 3A to Security Interest (Enforcement) Rules 2002 vitiates the auction sale made in favor third party.

(vii) That for issuance of appropriate writ order or direction or writ in the nature of mandamus commanding the respondents prohibiting them to transfer only residential House of the Petitioner in favor of any third party since the Respondent has

cleared the entire legitimate dues of the Bank & the Bank is required to reverse (1) renewal Charges debited by Bank after NPA when the Petitioner was not able to use their Cash Credit Facility (2) to reverse the interest realized after NPA (3) To reverse Rs. 1, 45,984/- deducted illegally from the Account of the Petitioner in the name of illegal e-auction which ought to have not happened in given circumstances when (A) the petitioner deposited over 24 Lakhs & (B) WHEN THE Petitioner by his Application dated 31.08.21 & 16.08.21 sought 12 months time As such direction by given to reverse the amount as aforesaid.

(viii) That For issuance of appropriate writ order or direction or writ in the nature of Mandamus Commanding the respondent Bank & restraining them from transferring the Residential House property in favor of any third party & further restraining them to create any third party interest with regards to residential house of the Petitioner & further restraining the respondent to deliver Physical possession to any third party by dispossession

of Petitioner from his Residential House Bearing Khata No.24 & 25, Survey Plot No.3807, 3802 (old), 6019, 6020, 6100 (New) under Thana No.190, Touzi No.3762, Situated at Mouja Nariyar Area 02 Katha 8.734 Decimal.

- (ix) That for issuance of appropriate writ order or direction or writ in the nature of Mandamus Commanding the Respondent Bank to repay the illegally deducted amount along with the interest

since an amount of Rs. 1, 45,984/ deducted illegally from the Account of the Petitioner including the Cash Credit Facility Charge of Rs.20, 000/ which was illegally deducted while the Account was declared NPA as such direction may be given to the respondent to return Rs. 1, 45,984/ along with interest.

- (x) That for grant of any other relief or relief's to which the petitioner be found entitled in law especially all along Cost of legal proceeding right from the DRT to Hon'ble High Court & Cost in terms of mental & physical harassment be granted to the Petitioner.

Learned counsel for the petitioner seeks permission to withdraw this petition.

Accordingly, this petition is disposed of as

withdrawn.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-Ranjan

AFR/NAFR	
CAV DATE	
Uploading Date	28.09.2022
Transmission Date	