

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14541 of 2022

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Himanshu Kumar Him S/o Harihar Nath Singh, R/o-Vill-Flat No-404A, Surya Chandra Vihar Apartment, Gola Road, District-Patna.

... .. Petitioner/s

Versus

1. The State Bank of India through the General Manager, SARB, 2nd Floor, Patna Main Branch Building, Gandhi Maidan (West), Patna.
2. The Assistant General Manager-cum-Authorized Officer, State Bank of India, SARB, 2nd Floor, Patna Main Branch Building, Gandhi Maidan (West), Patna.
3. The Chief Manager, State Bank of India, SME, Dak Bungalow Road Branch, South Gandhi Maidan, Patna.
4. M/s BHR Enterprises through its Partner Mukesh Kumar, having its Principal Office at Ganga Bridge Road, Bajrangpuri, Near Mahatma Gandhi Setu, P.S.-Alamganj, District-Patna.
5. Mukesh Kumar S/o Late Maithur Raut, R/o Flat No. -402, B Block Surya Chandra Vihar Apartment, Gola Road, Danapur, P.O.-Danapur, P.S.-Rupaspur, District-Patna.
6. Smt. Pinki Kumari, W/o-Mukesh Kumar, R/o Flat No. -402, B Block Surya Chandra Vihar Apartment, Gola Road, Danapur, P.O.-Danapur, P.S.-Rupaspur, District-Patna.
7. Smt. Pushpa Kumari, W/o-Niwas Thakur, R/o-Flat No.-301, Mandavi Apartment, SBI Learning Centre, Khazpura, Patna, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s	:	Mr. Santosh Kumar Singh, Adv.
		Mrs. Namrata Mishra, Adv.
		Mr. Divyam Verma, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-11-2022

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

“(a) To quash the possession notice dated



27.01.2022 issued by the Respondent Bank to the petitioner for taking symbolic possession of the dwelling house of the petitioner bearing flat no- 404A Surya Chandra Vihar Apartment, Block-A, Fourth Floor measuring super built up area 925 sq. ft. approx alongwith reserve car Parking space of one car on ground floor situated at Mauza Dhanaut, North of Ram Jaipal Registry & District- Patna (hereinafter referred as to the dwelling house of petitioner). A copy of possession notice dated 27.01.2022 is annexed as Annexure-1 to this application.

(b) To quash of the sale notice dated 11.02.2022 issued by the Resp. No-2 whereby and whereunder the dwelling house of the petitioner bearing flat no- 404A Surya Chandra Vihar Apartment, Block-A, Fourth Floor measuring super built up area 925 sq. ft. approx alongwith reserve Car Parking space of one car on ground floor situated at Mauza Dhanaut, North of Ram Jaipal Nagar, Paragana-Phulwari, Thana & Sub-Registry Danapur, Sadar Registry & District- Patna was put on e-auction sale during the date of e-auction on 24.03.2022. A copy of sale notice during 11.02.2022 is annexed as ANNEXURE-2 to this application.

(c) To quash the certificate of sale dated 25.04.2022 issued by the Resp. No-2 in favour of Resp. No-7 (Auction Purchaser) whereby and whereunder certificate of sale of the dwelling house of the petitioner bearing Flat NO-404A Surya Vihar Apartment, Gola Road, District- Patna has been issued in favour of Resp. No- 7 (Auction Purchaser). A copy of of certificate of sale dated 25.04.2022 is annexed as ANNEXURE-3 to this application.

(d) Further for issuance of mandamus directing the respondent bank to settle the account under NPA Management SBI one time settlement scheme as respondent no-5 has already applied before the respondent bank for settlement of his loan account under the said scheme and even



deposited 10% of the outstanding dues i.e. Rs 20 lacs on 15.03.2022 as in front fees but despite that respondent bank secretly and in clandestine manner, malafidely sold out the dwelling house of the petitioner which was mortgaged to the bank.

Any other relief or reliefs for which the Petitioner is entitled in the facts and circumstances of the case.

And during the pendency of this writ application man restrain the respondent bank for taking any cohesive action against the petitioner.”

It is brought to our notice that the property stands auction-sold. However, the process of registration of the property in the name of the auction-purchaser is not complete. It is argued that the petitioner, who was the guarantor, was never noticed prior to the issuance of the process under the provisions of the SARFAESI Act.

Shri Rajeev Kumar Singh, learned counsel for the petitioner, states that the petitioner shall immediately approach the forum constituted under the SARFAESI Act for redressal of the grievances.

Shri Santosh Kumar Singh, learned counsel for the respondents, states that if the petitioner were to exercise such option within two weeks from today, the Bank would not precipitate any further action.

Statement accepted and taken on record.



Petition is disposed of in the aforesaid terms.

Needless to add, if the petitioner were to approach the forum within a period of two weeks from today, the issue of limitation shall not come in the way.

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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2022
Transmission Date	

