IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.407 of 2020

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Brajraj Kumar Son of late Dhananjay Singh, R/o New Dellian, Old G.T. Road, P.O. and P.S. Sasaram, District- Rohtas.

... ... Petitioner

Versus

1. The Bank of Baroda through its Chairman-Cum-Managing Director, Suraj Plaza-1,Sayajiganj, Baroda- 390020
2. Regional Manager, Regional Office, Bank of Baroda, Boring Canal Road, Patna.
3. The Senior Manager-cum-Authorized Officer, Bank of Baroda, Sasaram Branch at Hansu Market, Old G.T. Road, Sasaram, AT- P.O. and P.S. Sasaram, District- Rohtas at Sasaram- 821115

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ravindra Kumar Shukla, Advocate
		Mr. Pratyush Pratap Singh, Advocate
For the Respondent/s	:	Mr. Sanjeev Shankar, Advocate

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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 : 04-08-2022

In the instant application, the petitioner has made the following prayers :-

> "(i) For issuance of a Fiat in the nature of Mandamus Directing/ Commanding the concerned Respondent to return back the petitioner's entire amount henceforth which the petitioner has deposited in the Bank for the property taken under E-auction and the Bank has also issued sale certificate in the aforesaid regard.
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> (ii) For issuance of an appropriate writ

Directing/Commanding the Respondent Bank to pay an interest over the deposited amount i.e. Rs. 3,86,84000/- at the rate of 18%.

(iii) Any other appropriate writ/writs be issued, direction/directions be given, order/orders be passed in the given facts and circumstances for which the petitioner may be found entitled."

2. The case of the petitioner, in brief, is that an e-auction sale notice was issued from Bank of Baroda, Sasaram Branch, Sasaram for sale of secured immovable/movable assets under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). The said notice was published in the daily news papers, namely, 'Dainik Bhaskar' and 'Hindustan Times' on 19.04.2018. The petitioner participated in e-auction bid and was declared the highest bidder. A sale certificate was issued in his favour under the signature of the Chief Manager / Authorised Officer, Bank of Baroda, Sasaram in which it has been certified that the sale of the scheduled property was made free from all encumbrances known to the secured creditor. However, after depositing the entire bid amount, the petitioner started running from one authority to another of the Bank for getting the scheduled property registered in his name. For one reason or another, the Bank could not register the scheduled

property and possession of the same has not been handed over to him till date inspite of depositing Rs.3,86,84,000/-.

3. In view of the counter affidavit filed on behalf of respondent Bank, the case of the respondent Bank is that credit facility was availed by two firms, namely, M/s Satya Enterprises & M/s Saraswati Enterprises from the Bank of Baroda, Sasaram Branch. The proprietor of both the firms are Mr. Sanjay Kumar. The scheduled property was mortgaged and was collaterally secured in both the accounts. M/s Satya Enterprises turned NPA on 30.09.2017 and M/s Saraswati Enterprises turned NPA on 31.10.2016. Hence, action was taken under SARFAESI Act in both the accounts. Against the said action under SARFAESI Act, SA No.140/2017 was preferred by the borrower before the DRT, Patna. The said SA No.140 of 2017 was dismissed vide order dated 17.10.2017. Against the said dismissal order, an appeal vide Appeal No.88 of 2018 was preferred before the DRAT, Allahabad by the borrower. In the meantime, the Bank initiated further action under SARFAESI Act and put the mortgaged property on auction on 15.05.2018 in which the petitioner was held the highest bidder. After the successful bid, sale certificate dated 13.08.2018 was issued to the petitioner.

4. While Appeal No.88 of 2018 was pending before

the DRAT, Allahabad, the borrower preferred another SA No.103 of 2018 through another account M/s Satya Enterprises as the same property was mortgaged in that account also and in the said SA No.103 of 2018, the DRT, Patna vide order dated 30.08.2018 adjourned the case to 24.09.2018 and till then directed both parties to maintain status quo as on that date in view of the fact the property sold in the matter is also involved in the Appeal No.88 of 2018.

5. Later on, Appeal No.88 of 2018 was disposed of by the DRAT, Allahabad vide order dated 23.03.2021 holding therein that the order of DRT dated 17.10.2017 had no infirmity.

6. After the said disposal of Appeal No.88 of 2018 in the Bank's favour, the Bank informed the petitioner regarding registering the concerned property in his favour and handing over the possession.

7. However, vide order dated 31.12.2021 passed by the DRT, Patna in SA No.103 of 2018, the sale and transfer of the property involved therein was set aside.

8. Aggrieved by the said order dated 31.12.2021, the DRT, Patna has preferred an appeal before the DRAT Allahabad vide Appeal No.53 of 2022 and has prayed for stay of the order and in the said matter notices have been issued upon the parties

fixing the date of appearance on 26.08.2022.

9. Learned counsel for the respondent Bank submitted that under the circumstances mentioned in the counter affidavit, the instant application under Article 226 of the Constitution of India would not be maintainable as the petitioner had got an effective and expeditious statutory remedy under sub-section (3) of Section 17 of the SARFAESI Act.

10. We have heard learned counsel for the parties and perused the materials on record.

11. Sub-section (3) of Section 17 of the SARFAESI Act provides that if the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of the Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved persons, it may, by order: (a) declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and (b) restore the possession of secured assets or management of secured assets to the borrower or such

other aggrieved person, who has made an application under sub-section (1), as the case may be; and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

12. Since an equally efficacious statutory remedy is available to the petitioner for the redressal of his grievance under Section 17 of the SARFAESI Act, we are not inclined to entertain the present application under the extraordinary writ jurisdiction.

13. Accordingly, the writ petition is disposed of with liberty to the petitioner to approach the tribunal under Section 17 of SARFAESI Act for the redressal of his grievance.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2022
Transmission Date	NA