IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1665 of 2023

==

M/s Kumar Stone Works, Gaya through its Proprietor Sri Arun Kumar Singh aged about 59 Years, Male, Son of Ambika Singh Resident of Village-Kendui, P.O.-Kendui, P.S.-Magadh Medical College, Gaya, District-Gaya.

... Petitioner

Versus

1. The Bihar State Financial Corporation, Frazer Road, Patna, through its Managing Director, Patna.
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna.
3. The Deputy General Manager, Bihar State Financial Corporation, Frazer Road, Patna.
4. The Assistant Manager I/C (Zone-II), Bihar State Financial Corporation, Frazer Road, Patna.
5. Legal Officer, Bihar State Financeial Corporation, Frazer Road, Patna.

... Respondents

==

Appearance :

For the Petitioner	:	Mr.Arun Kumar Sinha, Adv.
For the Corporation	:	Mr.Nikhil Kumar Agrawal, Adv.
For Respondent 6	:	Mr. Yash Sahay, Adv.

==

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

7 15-09-2023 I.A. No. 1 of 2023

For the reasons mentioned in the Interlocutory Application, the Interlocutory Application is allowed.

2. Heard learned counsel for the parties.

3. The brief facts as culled out from the pleadings are that the petitioner has hypothecated his land measuring 17 decimals bearing khata no. 103, plot no. 468 under thana no. 546 situated at village Bindas, P.S. Wazirganj, District Gaya, to the respondent-Corporation on 11.08.1987 for the purpose of

sanctioning a term loan of Rs.5,00,000/- (Rupees Five Lakhs). Pursuant to the said hypothecation an amount of Rs.4.58/- lakhs has been disbursed to the petitioner. It is the case of the petitioner that due to naxal activity in the area where land is situated, the petitioner could not conduct the business. That inspite of making several representations to the Corporation for shifting of the factory they have not passed any orders. That the petitioner came to know about the auction sale of hypothecated asset of the petitioner vide Order, dated 27.09.2022. Thereafter the petitioner rushed to the office of the respondents and made representations, no action was taken on the said representation. Even though the petitioner has stated about the inter se dispute between the family members of the petitioner, the same has no bearing on the issue involved, therefore, the same is not being reiterated. Learned counsel has stated that the petitioner was not put on prior notice before the auction was conducted and the same was knocked in favour of Respondent No. 6. Further, it is stated that the inaction of the respondents in not serving any prior notice to the petitioner for repayment of the amounts due or before putting the hypothecated property for auction is contrary to the principles of natural justice and equity and the same is liable to be set aside Learned counsel has stated that the petitioner is willing to deposit the amount of sale consideration paid by the Respondent No. 6 and prayed for allowing the present

Writ Petition.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel has stated that the respondent-authority duly following the procedure prescribed under the Act have put the hypothecated property for auction as the petitioner had not paid a single rupee to the credit of the loan account. The Respondent No. 6 being the highest bidder in the open auction, the sale was confirmed in his favour. Learned counsel has stated that the petitioner has taken the loan by hypothecating the land way back in the year 1987 and till date petitioner has not repaid a single rupee. That total outstanding amount due to the Corporation is approximately Rs.1,17,92,000/- as on 31.03.2021 and if the interest is added to the above authority amount it would be more than Rs.1.30/- Crores. That the official respondents have followed the procedure prescribed by the Corporation while conducting the open auction. The Corporation has issued advertisements in leading newspaper inviting tenders for sale of the mortgaged property and once the bids are received, the valuation of the property will be done by the two empanelled external valuers. Thereafter, on the basis of the valuation report the negotiation will be held with the tenderers and the highest offer made by the bidder and finalized in the negotiations will be published in the newspaper so as to

attract better offer. In this particular case the tenders were called and after negotiations were held the highest offer was finalized and the Respondent No. 6 who has initially offered Rs.18,00,000/- (Rupees Eighteen Lakhs) for the subject property has increased the offer to Rs.30,00,000/- (Rupees Thirty Lakhs) during the process of negotiation. The offer of Rs.30,00,000/- made by Respondent No. 6 was advertised in the newspapers so as to attract better offers, as no fresh bids were received, the sale was finalized in favour of the Respondent No. 6 and the sale order, dated 27.09.2022, was issued. That the entire amount of Rs.30,00,000/- has been paid by the Respondent No. 6. The petitioner had every opportunity to match the offer made by the Respondent No. 6 but the petitioner did not come forward, therefore, the sale was finalized in favour of the Respondent No. 6. Learned counsel has drawn the attention to the various notices issued to the petitioner to substantiate that the petitioner had knowledge about the Open Auction.

5. Admittedly, as seen from the records, the petitioner availed the loan way back in the year 1987 by hypothecating the subject property and amount of Rs.4.58/- lakhs was disbursed to the petitioner. However, the petitioner has not paid a single rupee to the credit of the loan account till date. As seen from the record, the official respondents duly following the procedure as contemplated under the Act have conducted the Auction. Even

though the petitioner had notice of the sale and had ample opportunity to match the offer made by the Respondent No. 6, the petitioner has not availed the said offer. The official respondents cannot be blamed for confirming the sale in favour of the Respondent No. 6. Further, it is to be noted that the total outstanding amount is approximately more than Rs.1.30/- Crores as on date the petitioner having taken a loan from the Respondent-Corporation was obligated to repay the loan amount within the stipulated amount. However, the petitioner did not pay a single rupee to credit of the loan account and there is no whisper that he will pay the entire outstanding loan amount with accrued interest. The petitioner having taken the loan way back in the year 1987 cannot keep quite for decades together and expect the authorities not to take any action. The financial institutions which extend the loan cannot run if the borrowers do not re-pay the loan amounts as per the terms and conditions of the loan agreement. If the loans are not re-payed in time the entire institutions will suffer losses and result in closure of the Institution itself. There can be no sympathies in favour of the borrowers who have defaulted in repaying the loan amounts. Once it is established that the authorities have followed the procedure contemplated under the Act and the petitioner has failed to show that the authorities have acted in a malafide manner or violated the provisions of the Act no relief can be granted to the petitioner. This Court does not find any merits in the present Writ Petition which calls for any interference by this Court.

6. The Writ Petition is devoid of merits and the same is, accordingly, **dismissed**.

(A. Abhishek Reddy , J)

Shamshad/-

U			